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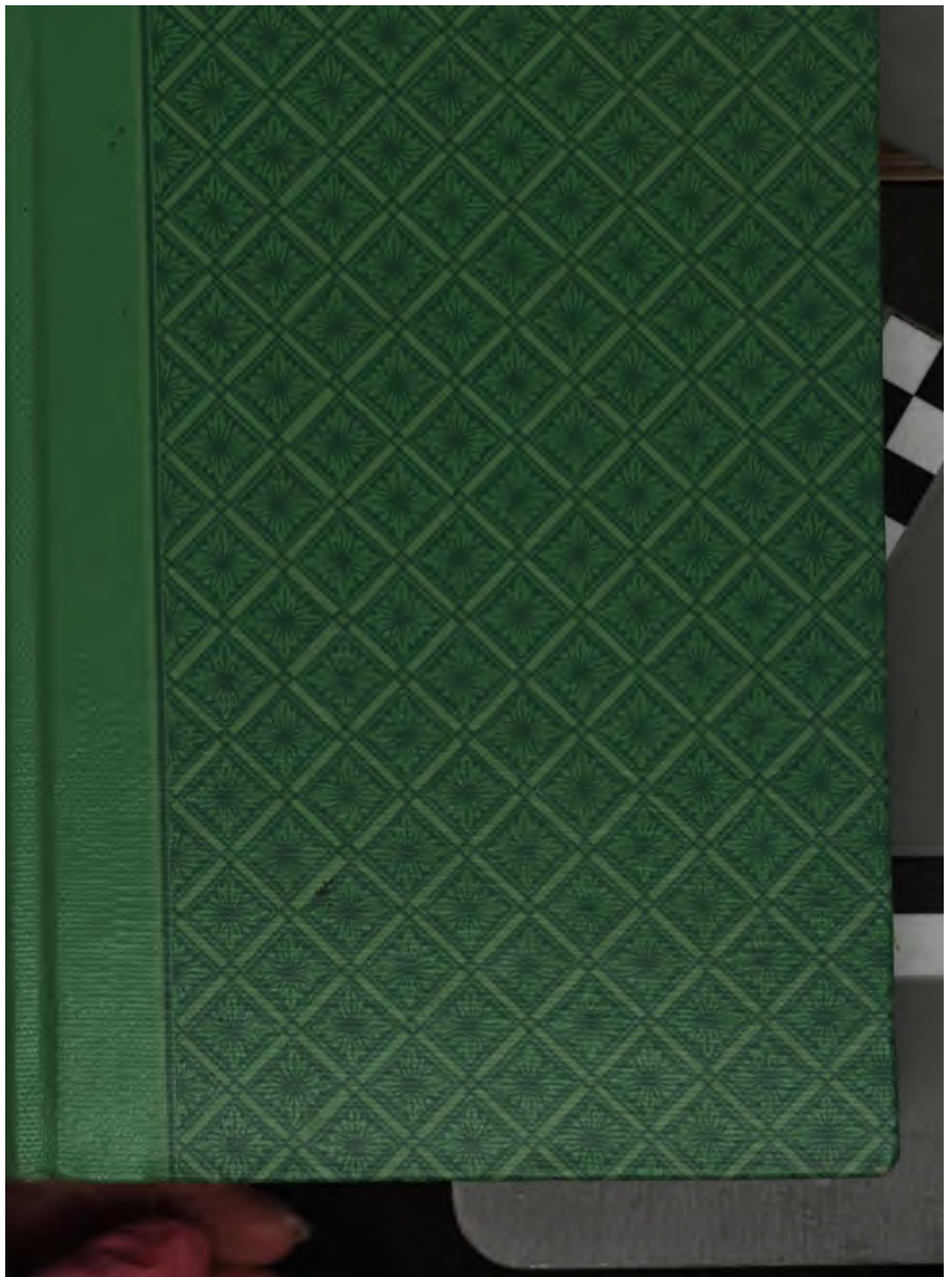
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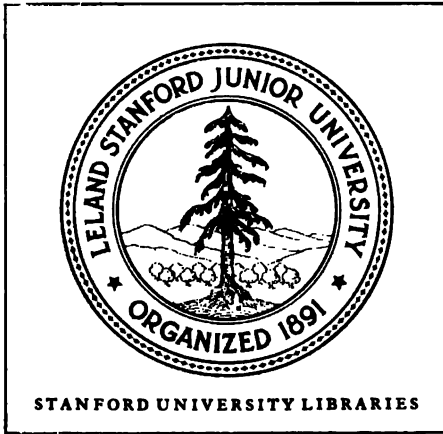
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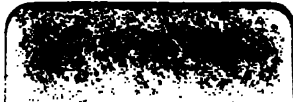
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Wm. D. Smith,
July 4 1920.

TO
JAMES PHINNEY BAXTER, D. LITT.
WHOSE HISTORICAL RESEARCHES AND WRITINGS
MAKE A LARGE CONTRIBUTION
TO THE HISTORY OF THE STATE OF MAINE
THIS VOLUME IS INSCRIBED
IN RECOGNITION OF LONG AND VALUABLE SERVICES

*The merit of the whole discussion
and interest of the book is in
Chap. XVII 25 seq.*



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PREFACE.

In this volume I bring together the results of studies long continued with reference to the northeastern boundary of Maine and our controversy concerning it. My interest in this controversy was awakened in 1878, when Governor Washburn read in Portland, at a meeting of the Maine Historical Society, a paper entitled *The Northeastern Boundary*, published later in the eighth volume of the first series of that society's collections. In 1894, the late Honorable George L. Rives, of New York, assistant secretary of state in President Cleaveland's first administration, published *Selections from the Correspondence of Thomas Barclay*, his great-grandfather, who was the British commissioner on the St. Croix Commission (1796-1798) for the settlement of differences that had arisen between the United States and Great Britain as to the true St. Croix River of the treaty of 1783. Later the Maine Historical Society received from Mr. Rives¹ (page 43, note) the valuable collection of boundary letters and documents once belonging to Colonel Barclay, and which he had used in the preparation of his *Selections*. Mr. Rives' volume, and the manuscripts mentioned as the gift of Mr. Rives to the Maine Historical Society, I carefully examined at the time, and from them derived material for a paper entitled *The St. Croix Commission*, which I read at a meeting of the Maine Historical Society, February 6, 1895, and which was published in the sixth volume of the second

¹*Maine Historical Society Coll.*, Second Series, VI, 249, 250.

series of the *Collections* of that society. The preparation of another paper, *The Attitude of Maine in the Northeastern Boundary Controversy*, read by the writer at a meeting of the Maine Historical Society January 2, 1903, and published in the first volume of the third series of the society's *Collections*, was suggested by an added study of boundary matters as considered in Professor William F. Ganong's valuable monograph, *Evolution of the Boundaries of the Province of New Brunswick*, published in 1902 in the *Proceedings of the Royal Society of Canada*. Another collection of valuable manuscript boundary material, known as the Ward Chipman papers, came into the possession of the Maine Historical Society in 1894, the gift of a member of the society, Mr. William H. Kilby, of Eastport. Ward Chipman was the British agent connected with the St. Croix Commission, and these papers which came into Mr. Kilby's possession by a noteworthy chance (page 49, note), comprised important correspondence and other manuscript material relating to the northeastern boundary. My examination of these papers from time to time, as opportunity offered, still further quickened my interest in boundary concerns.

Accordingly in 1914, when the state had published my *Beginnings of Colonial Maine* (a work relating to a period in Maine history that had an earlier claim upon my attention), I found the way open for an added and more thorough examination of this large and valuable boundary material. I also directed attention to the volumes of manuscript boundary correspondence and documents in the State Library in Augusta, of the great value of which I had long been aware. Unfortunately the important correspondence of the governors of Maine with the state department in Washington closes abruptly with the year 1839. Inquiry and search at the State House in Augusta have not brought to light the manuscript correspondence of 1840-1842.

Two comparatively recent books I have found especially helpful in matters relating to the boundary and the controversy concerning it. One of these is Professor John Bassett Moore's *History and Digest of International Arbitrations*, the first volume of which opens with a scholarly presentation of the prominent facts connected with the successive attempts of the government of the United States to settle the boundary controversy; and besides the footnotes, here and there on the following pages, I desire, in these added words, to give expression to the aid I have received from Dr. Moore's monumental work. The other book of which I wish to make special mention is Professor Ganong's *Evolution of the Boundaries of the Province of New Brunswick*, already referred to in this preface. Although written from another point of view than my own, Professor Ganong's work, the fruit of a long and thorough examination and study of the same boundary problems, has been of very great assistance.

A large part of the winter of 1915-1916, I spent in the Library of Congress, availing myself of the facilities for historical research afforded by its very large collections of books, manuscripts and maps. My thanks are due to the librarian, Dr. Herbert Putnam, and also to his assistants, for helpfulness generously rendered. For prompt answer to many calls, my thanks are also due to the librarian of the Maine State Library in Augusta, Rev. H. E. Dunnack, and his assistant, Rev. W. F. Livingston; also to Miss Alice C. Furbish, librarian of the Public Library in Portland with its large collection of congressional publications and of bound files of Maine newspapers; also and especially to Miss Evelyn Gilmore, librarian of the Maine Historical Society in Portland, and her assistant, Miss Ethel P. Hall, who, with unwearied diligence, have been of great help in bringing to my aid the manuscript and other information in the Historical Society's large

accumulations relating to the northeastern boundary controversy. To them, also, I am indebted for valuable assistance in securing photographic and other likenesses of early Maine governors and persons prominent in Maine's contention with reference to the boundary. For added illustrative material my thanks are due to the Honorable Seth S. Thornton and Mr. Thomas P. Packard, superintendent of schools, both of Houlton; also, to Mr. E. M. Blanding, of Bangor; Mrs. Katharine K. Estes, of Fort Fairfield; Mr. L. Percy Waddington, of Mars Hill; Mr. Edward D. Noyes, of Portland; and Mrs. Susan Grant Smith, of Wiscasset. In my search for the portraits in this volume I made much effort to include one of John G. Deane, who was so prominent in the boundary controversy after Maine became a state; and I greatly regret that the effort was unsuccessful.

While these pages have been passing through the press, Mr. S. H. Brown, manager of the Marks Printing House in Portland, has assisted me in many ways. I am also indebted to Miss Flora M. Mitchell, of the same establishment, for excellent work in overcoming the illegibilities in my manuscript and also in proof suggestions.

In connection with the celebration of Maine's first centennial in 1920, the publication of this volume is certainly fitting. During the past one hundred years the state has had a very honorable part in many affairs of national interest and importance; but in the boundary controversy it was very largely left to Maine alone to meet and resist the pretensions of British diplomacy. That service was most creditable from first to last; and in any review of it we certainly cannot forget that it was because of Maine's strong and unwearied efforts that a large and valuable part of our state territory was held within the national domain.

KENNEBUNKPORT, September 16, 1919.

THE INITIAL MONUMENT.

The initial boundary monument at the source of the St. Croix River, erected in 1799 in accordance with the declaration of the St. Croix Commission, was a cedar post. About five feet south of it a large yellow birch, about eight feet and five inches in diameter, was hooped with iron about ten feet from the ground. On the due north line to the St. John River from that point an opening through the forest was cut, thirty feet wide, fifteen feet on each side of the line, with markers placed at certain distances. In 1817, John Johnson, United States surveyor, and Colonel Joseph Bouchette, H. B. M. Surveyor General, erected a new initial marker a few feet north of the first, consisting of a cedar post twelve feet long and eight inches square, with large supporting stones on the east and west sides. The one on the east side was marked "N. B. July 31, 1817, J. B."; that on the west, "U. S. July 31, 1817, J. J." *British Dominions in North America*, by Joseph Bouchette, Volume I, page 14. In 1843, two boundary commissioners, J. B. Bucknall Estcourt (British) and Albert Smith (United States), appointed under the Ashburton treaty of 1842, replaced the initial cedar post by erecting a large iron monument (*Messages and Papers of the Presidents*, IV, 171), which on the east side had the inscription, "Lt. Col. J. B. B. Estcourt, H. B. M. Com'r."; and on the west side "Albert Smith, U. S. Com'r."; also on the north side "Treaty of Washington," and on the south side "Boundary, Aug'st 9th 1842." In 1908, this iron monument was reset in a concrete base, under the direction

of Dr. W. F. King, H. B. M. Boundary Commissioner, and Mr. O. H. Tittmann, U. S. Boundary Commissioner. Their names and the names of the attending engineers, C. C. Rainboth (British) and J. B. Baylor (United States), appear on the concrete base, with the date "1908." The frontispiece shows the initial monument as it appears in 1919, together with the opening through the forest on the due north line.

CHAPTER I.

THE ST. CROIX AS A BOUNDARY PRIOR TO 1783.



THE St. Croix River, the initial treaty boundary between what is now the State of Maine and the British Province of New Brunswick, received its name in 1604. In that year, the Sieur de Monts, with a body of colonists,¹ was on the Atlantic coast of North America in the interest of France, with a commission from the French king as lieutenant general and governor of territory from the fortieth to the forty-sixth parallel, a wilderness which he was to seize and hold under the name of Acadia.² First he explored the shores of the Bay of Fundy without finding a desirable location for a settlement. Then, proceeding down the coast into Passamaquoddy Bay, he discovered and entered a large river of such wonderful attractiveness under summer skies as to awaken the enthusiasm and admiration of his entire company. Upon an island in the middle of this river, and "a league or more from its mouth," de Monts planted his colony; and finding some distance above this island that branches of the river enter, suggesting the form of a cross, he gave to the island the name Isle de Sainte Croix³ (the Island of the Holy Cross), both the river and the island receiving the same designation. This is

¹The expedition sailed from Dieppe, France.

²For extracts from the patent of Acadia, granted November 8-18, 1603, to de Monts by Henry IV of France, see the *Farnham Papers*, Maine Historical Society, Documentary Series, I, 1-6.

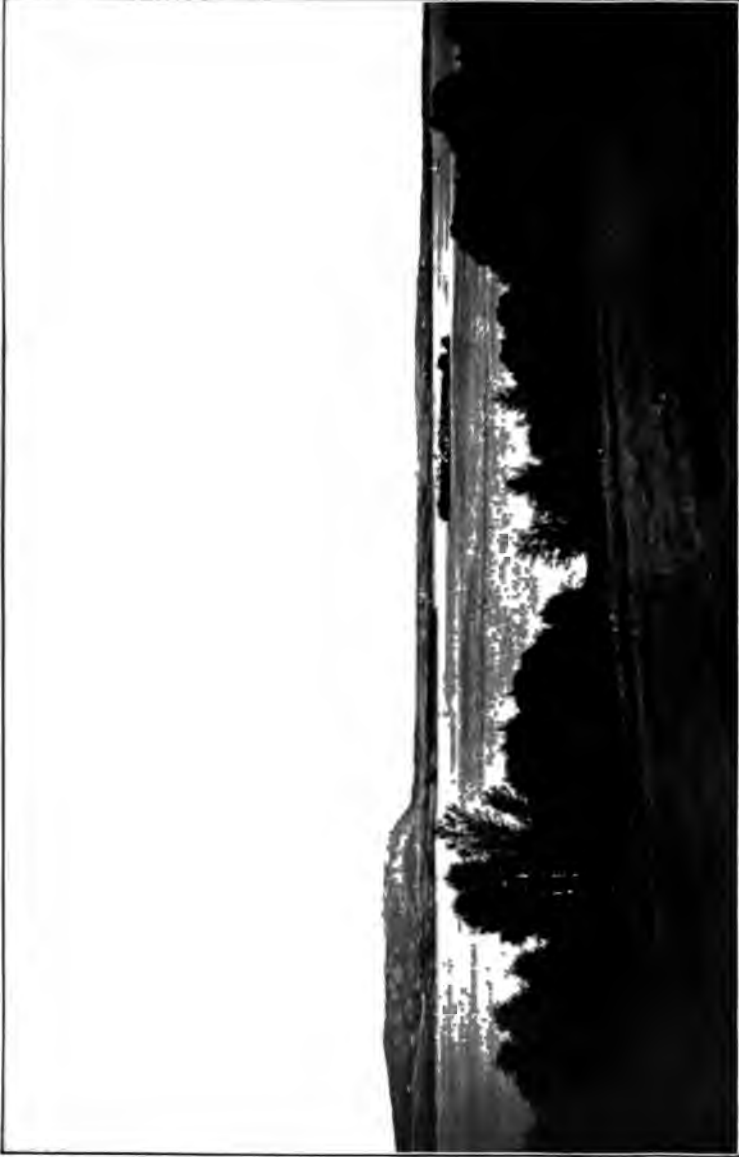
³Of great interest is the map of the country in which de Monts wintered, published by Champlain in 1613. On it the St. Croix River is clearly represented, a flagstaff and flag indicating the location of the settlement; while the three branches of the river, farther up, make the cross that suggested the name of the island and of the river. *Champlain's Voyages*, Prince Society, 1878, I, 32.

not the place for an account of the hardships endured by the de Monts colonists on St. Croix Island during the winter of 1604-1605. Champlain, the geographer of the expedition and the most distinguished member of the company, has told the story of its hardships in the first volume of his *Voyages*,¹ hardships so severe that thirty-five of the seventy-nine colonists miserably perished during the long, severe winter that followed, hardships which with the arrival of spring hastened the abandonment of the location.² But the name St. Croix, designating both the island and the river, has survived, not always in the memory of men, but in narratives, grants of land, treaties and documents of various kinds.

Notwithstanding this added westward movement on the part of France—she had in the preceding century taken possession of territory farther north, moving inland by way of the waters of the St. Lawrence—England was by no means unmindful of the opportunities for colonization which the discovery of the new world

¹ Prince Society Ed., I, 50-52.

² An interesting glimpse of life on St. Croix Island, before the severities of that icy winter fully descended upon the colonists, is given by Prof. W. F. Ganong: "One of the methods used by the young gentlemen to keep up their spirits during the winter deserves special mention. They appear to have circulated a kind of periodical, called the 'Master William,' which was, as L'Escarbot tells us, 'stuffed with all kinds of news.' Such was the first periodical of this valley, and it is possible for the antiquary to claim that the first literary periodical of America was the 'Master William,' circulated (of course in written, not printed, copies), at Dochet [a later designation of St. Croix] Island, in the winter of 1604-1605. But a single quotation from it has been preserved. L'Escarbot tells us that it said among other things that Sieur de Monts 'did pull out thorns in Canada,' an expression seemingly equivalent to our phrase 'draw the teeth,' or subdue. But the chief interest in this passage is that it serves to suggest to L'Escarbot an expression of his admiration for such enterprises as that of Sieur de Monts, for he adds: 'And when all is said it is very truly pulling out thorns, in taking in hand such enterprises full of continual perils and fatigues, of cares, anguish and discomforts. But the virtue and the courage which subdues everything makes these thorns but carnations and roses to those who are determined on heroic actions to commend themselves to the memory of men, and close their eyes to the pleasures of those effeminate who are good only for chamber-guards.'" *Maine Historical Society Coll.*, Third Series, II, 119.



ST. CROIX ISLAND FROM THE MAINE BORDER.



had opened, Sir Walter Raleigh's expeditions having made their way to the American coast, farther down, in the closing decades of the sixteenth century.¹ If those expeditions brought only disappointment to their promoters, hope was not destroyed. In 1602 Gosnold was on the coast, as was Pring in 1603, Waymouth in 1605, and Pring again in 1606. In that same year, 1606, James I gave charters to two companies for the purpose of planting English colonies in America, one of these, the London Company, receiving a grant of territory between the thirty-fourth and forty-first degrees of north latitude; and the other, known as the Plymouth Company, receiving a grant of territory partly overlapping that of the London Company and extending from the thirty-eighth to the forty-fifth degrees.² Settlements at Jamestown, Virginia, and at the mouth of the Kennebec soon followed.

The grant to the Plymouth Company was a denial, on the part of England, of any French territorial claim because of de Mont's temporary settlement at St. Croix Island. This denial was affirmed by the destruction of the French Jesuit colony near Southwest Harbor, Mount Desert, by Argall, in 1613. In 1619, by petition, the Plymouth Company made a request of the king that the territory they had received might be known as New England,³ and in granting the request James I, in 1620, extended the company's limits from the fortieth degree to the forty-eighth, thus carrying the British claims still farther north.⁴ New boundaries in the northern part of this territory appeared in 1621, in a grant made by the king to Sir William Alexander, the king's secretary of state and favorite, the territory being described as follows: "all

¹ *Early English and French Voyages*, New York, Charles Scribner's Sons, 223-321.

² *Farnham Papers*, I, 6-12.

³ The designation was given by Captain John Smith, and first appeared in print in his *Description of New England*, in which he records what he learned concerning that part of the coast of North America in the summer of 1614.

⁴ *Farnham Papers*, I, 20-45.

and singular the lands, continents and islands, situate and lying in America, within the cape or promontory, commonly called Cap de Sable, lying near the latitude of forty-three degrees, or thereabout, from the equinoctial line northward, from which promontory, toward the coast, verging to the west, to the harbor of Sancta Maria, commonly called Sanctmareis Bay, and thence northward, traversing, by a right line, the entrance, or mouth of that great naval station which runs out into the eastern tract of the land between the countries commonly called Surequois and Stechimines, to the river commonly called by the name of Sancta Crux, and to the remotest source or fountain on the western side of the same, which first discharges itself into the aforesaid river, and thence, by an imaginary right line, which might be conceived to proceed through the land, or to run northward to the nearest naval station, river, or source, discharging itself into the great river of Canada, and proceeding from it by the sea shores of the same river of Canada, eastward to the river, naval station, port, or shore, commonly known and called by the name of Gathepe, or Gaspie, and thence south eastward to the islands called Baccaloes, or Cap Britton, leaving the same islands on the right, and the gulph of the said great river of Canada, or great naval station, and the lands of Newfoundland, with the islands pertaining to the same lands, on the left, and thence to the cape or promontory of Cap Britton, toward the south and west to the aforesaid Cap Sable, where the circuit began."¹ This boundary description is significant, not only as having a place in "the first national patent that

¹ *Farnham Papers*, I, 59, 60. "When we remember that the 1621 boundary was to run through to the St. Lawrence from the source of the river St. Croix, we can scarcely doubt, with Champlain's map before us, that the branch running farthest up towards the St. Lawrence, *i. e.*, our present Chiputneticook branch, was the one intended as the boundary, and not the short western branch. This is confirmed by the fact that the long branch shows at its head three branches, and it would seem probable even to certainty that the words 'western source' were added in order to decide which one of these three was to form the boundary." Ganong, *Evolution of the Boundaries of the Province of New Brunswick*, Transactions of the Royal Society of Canada, Second Series, 1901-1902, VII, 170.

ever was clearly bounded within America by particular limits upon earth"¹ (to use the language of Sir William Alexander), but as establishing, in language from which later descriptions have liberally borrowed, the St. Croix River as the western boundary of Nova Scotia. It is in this charter, also, that "Nova Scotia" is mentioned as the designated name "in all time to come"² of the territory described.

France, however, had not lost sight of her interests on the north Atlantic coast; and April 24, 1629, at Susa in Piedmont, she concluded a treaty of peace and goodwill with Great Britain, in which the kings of the two countries renewed "the ancient alliances betwixt them," and came to some agreements that were to find expression in a later treaty. In accordance with these agreements, it is inferred, France, expecting that in the forthcoming treaty Acadia would be restored to her, made a cession of that country to the Company of New France,³ an organization designed to advance French interests in that part of the new world. In turn, this company, May 14, 1632, granted lands adjoining "the river and bay of St. Croix" to Isaac de Razillai, who was made governor of Acadia. In this grant mention was made of "St. Croix Island," where de Monts wintered—a reminder of a French territorial claim based on that earlier French occupation on the Atlantic coast.

The later treaty, which was the treaty of St. Germain, contained a promise on the part of the king of Great Britain "to give up and restore all places occupied in New France, Acadia and Canada by the subjects of the king." Naturally the French understood the language of the treaty as implying the cession not only of "places" in Acadia, but of the whole country included under that designation. Charles I, however, denied any purpose or even thought of restoring to France anything more than the language of the treaty indicated, namely "places" occupied by the

¹ Slafter's *Sir William Alexander*, Prince Society, 197.

² *Farnham Papers*, I, 60.

³ *Ib.*, I, 172.

British. Writing to the Scottish Privy Council not long after the treaty of St. Germain was signed (May 29, 1632), he made the statement: "We have never meant to relinquish our title to any part of these countreys;" and he directed Sir William Alexander "to go on in the said work," that is of colonization, promising to protect him and those associated with him, and also to compensate them in case he should oblige them to withdraw at any time—a glimpse of the crooked workings of a Stuart mind. The insincerity of the king is not concealed by his pretensions.¹ Even with the king's declaration as to the meaning of the treaty, Sir William could have found little satisfaction in the thought that though "places" only had been restored, the rest of Acadia was his; and it may have been in an endeavor to soothe his wounded feelings that the Council for New England in 1635, in connection with the surrender of the great patent, granted to William, Lord Alexander, a son of Sir William Alexander, "all that part of the main land of New England beginning from a certain place called or known by the name of St. Croix next adjoining to New Scotland in America and from thence extending along the sea coast unto a certain place called Pemaquid and so up the river thereof to the farthest head of the same as it tentheth northward and extending from thence at the nearest unto the river of Kennebec and so upward along by the shortest course which tendeth unto the river of Canada, from henceforth to 1

¹ Gardiner, *History of the Great Civil War, 1642-1649*, in his account of the close of Charles' career, makes mention of the king's duplicity as an established characteristic, IV, 327, 328: "Men who would have been willing to come to terms with him, despaired of any constitutional arrangement which he was to be a factor; and men who had long been alienated from him were irritated into active hostility. By these he was regarded with increasing intensity as the one disturbing force with which no understanding was possible and no settled order consistent. To remove him out of the way appeared, even to those who had no thought of punishing him for past offences, to be the only possible road to peace for the troubled nation. It seemed that so long as Charles lived deluded nations and deluded parties would be stirred up by promises never intended to be fulfilled."

called and known by the name of the county of Canada."¹ The river St. Croix in this way still remained the western boundary of Nova Scotia, while it became the eastern boundary of this new grant covering the territory between Nova Scotia and Sir Ferdinando Gorges' Province of Maine.

Not long after, at the death of William, Lord Alexander, the grant reverted to Sir William, his father, who apparently paid little attention to it, probably on account of unfavorable conditions at home in connection with the Civil War in England; and with the lapse of years the grant became extinct. In the revival of colonial interests under Cromwell, it was assumed that British rights in the new world not only included the Acadia of the Alexander grant, but carried the western boundary of that territory as far as "Pentecost and the river of St. George to Muscontus [Muscongus] situate upon the confines of New England."² This removal of the boundary, however, received short recognition, for when Charles II, in 1664, granted to his brother, James, Duke of York, territory now a part of the State of Maine, the river St. Croix was again mentioned, the grant being the same as that made to William, Lord Alexander, the language descriptive of its boundaries evidently being borrowed from that used in the Alexander grant, as follows: "All that part of the main land of New England beginning at a certain place called or known by the name of St. Croix next adjoining to New Scotland in America and from thence extending along the sea coast unto a certain place called Petuaquine or Pemaquid and (so) up the river thereof to the furthest head of the same as it tendeth northwards and extending from thence to the river of Kinebequi, and so upwards by the shortest course to the river of Canada northward."³

¹ *Farnham Papers*, I, 190.

² Commission of Colonel Thomas Temple by Oliver Cromwell, September 17, 1656. *Farnham Papers*, I, 283.

³ *Farnham Papers*, I, 306. See also the *Baxter MSS.*, IV, 190, 195, where the grant is given in full, and is followed by interesting papers concerning Nova Scotia and the Pemaquid country.

But by the treaty of Breda, July 21, 1667, Charles II agreed to restore Acadia to France,¹ and in letters patent, a year later, he described the restoration as including "all that country called Acadia, lying in North America, which the said most Christian king did formerly enjoy, as namely the forts and habitations of Pentagoet, St. John, Port Royal, la Heve and de Cape Sable,"² language which by its mention of places formerly in possession of the French king would seem to indicate that Charles was ceding no more than was included in the cession made by his father, as already mentioned. However, as later he abandoned British claims to Acadia, directing Colonel Thomas Temple not only to surrender the places, but to withdraw from the country, he seems to have accepted the French understanding of the terms of the treaty of St. Germain. Such a cession aroused much British ire, Colonel Temple at first refusing to obey the order he had received "until his majesty's pleasure be further known both as to the bounds and limits of Acadia and Nova Scotia, there being no places mentioned in my order, but La Heve and Cape Sable, that belong to Acadia, and the rest of the places mentioned, viz., Pentagoet, St. John's and Port Royal are in Nova Scotia, bordering upon New England."³ When, however, in 1669, the king's purpose was reaffirmed, and Colonel Temple was required to give up to the French all the mentioned places without further delay, the whole Penobscot country was included in this restoration. Nevertheless the old British claim persisted, and Sir Edmund Andros's commission from James II, in 1688, made him captain general and governor-in-chief of "all that tract of land in America from forty degrees of northern latitude

¹ *Farnham Papers*, I, 311.

² *Memorials of the English and French Commissaries*, 584, cited by Ganong, *Evolution of the Boundaries of New Brunswick*, 185. See also *Farnham Papers*, I, 312.

³ Ganong's *Evolution of the Boundaries of New Brunswick*, in *Transactions of the Royal Society of Canada*, Second Series, 1901-1902, 186.

. to the river of St. Croix eastward."¹ In this way the St. Croix River once more comes into view as the boundary between New England and Acadia.

The Revolution in England in 1688, which brought to an end the reign of the Stuarts, had far-reaching results. The abdication of James II, in December of that year, and the succession of William and Mary to the throne in February, 1689, brought also to an end the government of Andros. His arrest and deportation followed in April, and a provisional government, established "according to charter rights," assumed the management of New England affairs until the new province charter, of October 7, 1691, was received, incorporating "the Colony of Massachusetts Bay, the Colony of New Plymouth, the Province of Maine, the territory called Acadia or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said Province of Maine," into one province to be known as the Province of Massachusetts Bay in New England.²

Notwithstanding this British claim and action, by which the territory covered by the designations Acadia and Nova Scotia was included in the Province of Massachusetts Bay, France continued to assert her right to the country and occupied Port Royal. September 10, 1697, the peace of Ryswick again restored Acadia or Nova Scotia to the French, rendering of no effect the conquests made in that country by the British in what was known as King William's war, while even the Sagadahoc territory again became disputed territory.³ In fact, this peace was a truce only. In 1702, England and France were again at war. Port Royal was retaken by the English in 1710; and in 1713, in accordance with the provisions of the treaty of Utrecht, "all Nova Scotia or Acadia, with its ancient boundaries, also the city of Port Royal, at this time called Annapolis Royal, and all other things, in those parts, which depend on the said lands and islands, together with

¹ *Farnham Papers*, I, 380.

² *Ib.*, II, 5, 6.

³ *Ib.*, II, 28.

the dominion, propriety and possession of the said islands, lands and places, and all right whatsoever by treaties, or by any other way obtained," were made over "to the queen of Great Britain and to her crown forever."¹

In the later colonial period differences arose at times with reference to the western boundary of Acadia, Massachusetts insisting that by her charter of 1691 she came into possession of the ancient Sagadahoc country; while Nova Scotia asserted claims, or advanced suggestions of claims, covering territory within Sagadahoc limits. Thus in 1719, Governor Phillips, who had been made governor of Placentia and captain general and commander-in-chief of Nova Scotia, writing to the Lords of Trade from Boston, while on his way to Port Royal, said: "I meet with many old patents granted to people of New England never yet produced for approbation, lying in a part called the king's territory between New England and Nova Scotia, and, as I imagine, under the government of the latter, likewise many old Indian grants for vast tracts in the same territory which never had the sanction of any government." In a subsequent letter, he mentions these lands as "lying between the rivers of Kennebec and St. George" and adds, "the bounds between the government of Nova Scotia and New England are not declared."² Again, in 1732, the Nova Scotia government, inferring from ancient boundaries that its authority extended to the river St. George, made surveys west of the St. Croix.³ With the increase of settlers in both provinces as the century advanced, boundary matters became increasingly important. Thus in February, 1762, a committee of the General Court of the Province of Massachusetts Bay, appointed to take into consideration the bounds between that province and Nova Scotia, stated in a report that according to Sir William Alexander's patent the St. Croix River, "to the head thereof and the remotest westernmost branch or stream, and, from thence, by

¹ *Farnham Papers*, II, 33, 34.

² Murdoch, *History of Nova Scotia*, I, 359, 360.

³ *Nova Scotia Archives*, II, 84.

an imaginary line to run north to the river St. Lawrence," was the boundary. But which of the three very considerable rivers that empty into Passamaquoddy Bay—the Cobscook, the Schoodic and the Magaguadavic—was the St. Croix of the boundary, was a question which the members of the committee either raised, or found had already been raised; for each one of the three, at some time and in some way, had been known by the designation St. Croix.¹ In their suggestion, "That by the first voyage made by the French, who gave the name to the river St. Croix, the said river may be ascertained," the committee indicated a source of information that was to be singularly fruitful later, when the period of controversy was reached and search made. How very imperfectly, however, the members of the committee apprehended the significance of their own reflections is revealed in the added suggestion that "one or more gentlemen be appointed by this Court to join with such as may be appointed by the Province of Nova Scotia, to repair to said river St. Croix and to determine upon the place where the said north line is to begin, and to extend said line as far as the said commissioners shall think it necessary, and to ascertain the same by marked trees or other boundary marks."² Meanwhile, until the matter should receive further consideration, it was agreed by both parties that no added grants of land should be made in the disputed territory until action pertaining to the boundary should have been taken.

By the treaty of Paris, February 10, 1763, France, as the closing act in a long, losing conflict, ceded to Great Britain the whole of her North American possessions except two small islands, which were "to serve as a shelter to the French fishermen."³ In

¹This transfer of designation is easily explained. Since the St. Croix received its name from de Monts, the St. Croix region had not known uninterrupted occupation by any one nation. At times the French were in possession, and at times the British; and such occupation, by either France or Great Britain, failed in the establishment of settlements in which ancient traditions would be kept alive.

²The General Court appointed William Brattle and James Otis for this service. *Acts and Resolves of the Province of Massachusetts Bay*, VII, 310.

³*Farnham Papers*, II, 58.

the same year, evidently to meet the wishes of both Massachusetts and Nova Scotia, the river St. Croix was again designated by Great Britain as the boundary between the two provinces. Forthwith the importance of securing actual surveys of the boundaries occurred to the Massachusetts authorities, and Sir Francis Bernard, governor of the province, employed for this purpose John Mitchell, possibly the Jno. Mitchell,¹ who, in 1755, prepared the large map of the British and French possessions in North America, instructing him to proceed to the bay of St. Croix or Passamaquoddy, to survey the coast between the rivers St. Croix and Passamaquoddy, and also the rivers themselves. In preparing his instructions, the governor seems to have had before him Captain Cyprian Southack's map of 1733 and John Mitchell's map of 1755, upon which these two rivers appear, both entering Passamaquoddy Bay, the Passamaquoddy (in Mitchell's map spelled Passamacadie) at the northwestern extremity, and the St. Croix at some distance eastward. Having finished his survey of the west side of the bay and of the Passamaquoddy River, the surveyor was to give his attention to the east side and the St. Croix River. "When you get to the head of the river, you will find a pond,² which you must delineate as exactly as you can, and particularly find out the most northern point of it, so as to set it down in your plan." When this had been done, there were added directions as follows: "One of you [that is Jones or Fletcher of Mitchell's assistants], or both if you please, with a party assisted by Indians with their canoes, must cross by the usual portage from the pond into the river Madanwamkee, which falls into the Penobscot and will carry you all the way to Fort Pownall with the stream. This whole passage must also be surveyed."³ The map of 1755 represents a short portage connecting

¹ Kilby, *Eastport and Passamaquoddy*, 91.

² Such a pond, marked "Kousaki L." on Mitchell's map of 1755, is represented as the source of the St. Croix River.

³ *Boundary MSS.*, State Library, VII, 57-60. Mitchell's instructions were dated April 25, 1764.

Lake Kousaki with smaller lakes and a stream entering the Penobscot—another indication that Governor Bernard had before him Mitchell's map of 1755 when he prepared his instructions.

Governor Bernard's survey may have been suggested in connection with his scheme for a new arrangement of New England as outlined by him in the following year. According to this outline the Province of Maine was to be extended eastward to the Penobscot bay and river, while another province, still farther eastward, "would contain the remainder of the territory of Sagadahock, with so much of the continent of Nova Scotia as shall be thought proper to add to it; for instance from the River Penobscot to the River St. Johns." In his further unfolding of the scheme, Governor Bernard does not again make mention of the river "St. Johns," but he describes the parts that are to comprise this new province as in the meantime (namely, until a sufficient number of people can be secured to form a government of their own) "divided by the bounds of Nova Scotia, that is, that country which lies on the east of the St. Croix to remain to the government of Nova Scotia, and that which lies on the west of St. Croix to remain to the government of Maine and Sagadahock."¹

While this scheme was receiving the attention of Governor Bernard, he sought information relating to de Monts' settlement on St. Croix Island in 1604, evidently moved thereto by the suggestion of the committee of the General Court in 1762, as already mentioned. In his search he used L'Escarbot's account as found in Purchas' *Pilgrimes*, also Champlain's account in his *Voyages*, published in 1632. His purpose, he explained, had reference to a proposed settlement in that locality to be made by some of his friends; and the matter was of some importance, he said, since in case they should take grants on the west side of the St. Croix they might hereafter be impeached for being under the seal of Nova Scotia and out of its boundary.²

¹ *Maine Historical Society Coll.*, Third Series, I, 339-343. The letter in which the scheme is unfolded is in a letter addressed to the Earl of Halifax, the British secretary of state, and is dated Nov. 9, 1764.

² *Boundary MSS.*, State House, Augusta, VII, 236, 237.

In accordance with the instructions of Governor Bernard, Mitchell and his assistants, Nathan Jones in command of the soldiers accompanying the party, and Captain Fletcher an Indian interpreter, made their way to Passamaquoddy Bay. In his field book, under date of Sunday, June 3, 1764, Mitchell mentions his purpose to go with his party to the St. Croix River on the day following. He went, however, only as far as "Harbor leeteet [L'Etete] alias Womkoocook," where he met the Indians, who had been secured as guides, and had a conference with them. The record in the field book for June 3d is as follows:

"Sunday, June the 3d, 1764. A foggy morning, the wind a S. W. Half after three in the morning Captain Jones, Mr. Boyd, Mr. Jones and myself with four of our men went in the whale-boat to Latterell in order to get provisions from our encampment, and when we came to Latterell, Captain Fletcher thought it most expedient to go to St. Croix the next day, by reason that the Indians who had for some days past been drunk were got sober; so Captain Jones ordered the men that came with us to go back to where we left the rest of our men in order to bring them all to Latterell to be ready to depart on Monday morning for St. Croix.

"Monday, June the 4th, 1764. A foggy morning and calm this morning. Captain Jones employed Mr. James Boyd and his whale boat and Mr. Walker to assist us to carry our men and provisions to the river of St. Croix and to assist us up said river. One half after eight in the morning we departed from Latterell and one half after twelve we arrived at Harbor leeteet alias Womkoocook, where we met with the Indians, and Captain Fletcher had a conference with them and the Indians appointed two to go with us on Tuesday morning.

"Tuesday, June the 5th, 1764. This morning at six of the clock two Sanops and two squaws, with one birch canoe, set off with us in order to go with us to the river St. Croix, and we proceeded up the bay about two miles, and the wind N. W. a fresh gale, and the tide against us, we put ashore on the east side of the bay to wait till the tide would turn; and while we waited for

tide of flood four of our men went a little way from the shore in the whale-boat a fishing and caught one halibut and three small cod fish; and at young flood we all got aboard of our boats and proceeded towards St. Croix, and at eleven of the clock we arrived at the entrance of said river, at which time Captain Fletcher requested three of said Indians to swear that the said river that they showed us was actually known by the name of St. Croix river. The names of said Indians are as followeth, Lue Nepton, Meesel and Mary Catron. And we tarried there awhile and ate dinner, then went up said river to the falls, and then the Indians told Captain Fletcher that they would go no farther and the falls being so large that we could not get the whale-boat over it, and it being impossible to go on the land to survey the river, I began a little below the falls; and the courses are as followeth."¹

This river, in location corresponding with the St. Croix of the map of 1755 as indicated in the above record, and confirmed under that name by the Indians of Mitchell's party, but now known as the Magaguadavic, was accepted as the St. Croix of the boundary by Governor Bernard's surveyor, who proceeded with his surveys and completed them in accordance with his instructions. Mitchell himself, having finished his work, returned to Boston from Passamaquoddy Bay by sea, taking with him three maps of the bay and the St. Croix River, which he delivered to Governor Bernard. Some of the members of his party, as directed in his instructions, made their way homeward by way of the portage and streams entering the Penobscot.²

¹This diary, in its original manuscript form, is in the library of the Maine Historical Society, Portland, Maine. Attached to it is the deposition of John Mitchell, dated August 3, 1796, and with it is the statement of William White, justice of the peace, that "this book of twenty-one page leaves, and a map, was annexed to the deposition of John Mitchell this day as the minutes of his survey at St. Croix and the country at the Eastward in 1764"; also that in his presence he delivered the same to James Sullivan, Esq., for use in connection with the boundary proceedings before the St. Croix Commission.

²Letter of Governor Bernard to Governor Wilmot of Nova Scotia, Feb. 9, 1765. *Boundary MSS.*, VII, 236.

Governor Bernard, however, was not satisfied with the report which his surveyor brought. As has already appeared, his examination of evidence furnished by Champlain in his *Voyages* had led him to question whether the St. Croix of the map of 1755 was the St. Croix of de Monts and Champlain, and therefore the St. Croix of the boundary between the Province of Massachusetts Bay and the Province of Nova Scotia. His doubts were increased by Mitchell's report. In the letter to Governor Wilmot cited above, he wrote: "I send you an extract from Champlain with references to a map¹ of the upper part of the bay, which contains all the rivers which fall into it from whence it appears to me that the river St. Croix is not that which the Indians lately pointed out, but another northwest of it."²

These investigations with reference to the boundary in 1764 were followed in 1765 by like investigations in the same region under the direction of Charles Morris, the surveyor general of the Province of Nova Scotia, in whose hands Governor Wilmot placed the information from Champlain that he had received from Governor Bernard. This information should have been helpful in a search for the ancient St. Croix, but the surveyor general failed to make use of it (perhaps from instructions to carry the line as far westward as possible), identifying the St. Croix with the Cobscook, and making that river the boundary of Acadia, and the assigned boundary of Nova Scotia. The points of identification mentioned in his report, however, furnished no ground even for probability, though his possible support from Indian testimony was doubtless of as much value as the testimony of the Indians who accompanied Mitchell to the Magaguadavic and upon oath declared that river to be the St. Croix.³

Governor Bernard's connection with matters on the northeast-

¹ Mitchell's map of 1755, not Champlain's.

² *Boundary MSS.*, VII, 235.

³ Charles Morris' memorandum for Governor Wilmot entitled *Observations upon Gov. Bernard's Remarks on the Plans of Passamaquoddy made by his direction in 1764.* *Boundary MSS.*, VII, 217, 218.



CHAMPLAIN'S MAP OF ST. CROIX ISLAND.

ern boundary of the Province of Massachusetts Bay, however, were not long continued. As the royal governor of the province, he found himself increasingly out of sympathy with most of the colonists. Doubtless, for all of the oppressive measures of which complaint was made, he was not responsible; but he was the representative of the king and his ministers, and in administering the affairs of the province in their interest, and not in the interest of the people as was made known to him in many ways, he found his position so uncomfortable at length that in the summer of 1769 he resigned the governorship and returned to England, his departure from Boston being made an occasion for general public rejoicings.¹

Governor Bernard's successor was Thomas Hutchinson, then lieutenant governor of the province, though he did not receive his commission as governor until 1771. In the early part of his administration, affairs concerning the eastern territory of the province were brought to his attention. One matter of considerable importance had reference to masts suitable for use in the royal navy. For many years, under the direction of a surveyor general of his majesty's woods in North America, "such masts had been obtained from the forests in New Hampshire and in the western and central parts of Maine. Now, with the settlement of towns in eastern Maine, there was an inquiry for such masts in this new country, and in 1771, William Brattle, James Bowdoin and Thomas Hubbard were instructed to obtain the required information concerning the mast supplies that the forests of the region between the Penobscot and the St. Croix would be able to furnish. Another consideration, to which the commissioners were to give attention, had reference to the boundary between the Province of Massachusetts Bay and Nova Scotia, a definite understanding with Nova Scotia being deemed exceedingly desir-

¹"The bells were rung and cannons fired from the wharves; Liberty Tree was gay with flags; and at night a great bonfire was kindled upon Fort Hill." Bancroft, *History of the United States*, VI, 291. In England, on the other hand, he was received with distinguished consideration, and made a baronet.

able. From their report it appears that they had with them Champlain's description of the St. Croix River. They also secured the testimony of one who for sixty years had traded with the Indians in the St. Croix region and knew the river by that name. After considering such information as they were able to obtain, they came to this decision: "It is plain to us that the River St. Croix, which we call by that name, and which is east of Passamaquoddy, is the true River St. Croix and the eastern boundary of this province as mentioned in the charter. Notwithstanding which, we are well informed that there are grants made by the Governor, or Government of Nova Scotia, of Grand Manan, some of the islands of Passamaquoddy Bay, and of land upon the main and settlements thereon, all west of St. Croix; and we are also informed that the same lands are very good."¹ According to this report, Champlain's description seems to have been no more helpful to these commissioners than to the surveyor general of Nova Scotia.

The colonial period was now drawing to a close. From the St. Croix, along nearly the whole length of the Atlantic seacoast, the uprising of the colonists against any infringement of their liberties was already in progress. Especially was this true in the settlements of the Province of Massachusetts Bay. As Governor Bernard, by his endeavors to enforce the obnoxious stamp act, and by bringing British soldiers from Halifax to Boston, found himself unable to withstand the spirit of resistance he had thereby awakened, so was it with Governor Hutchinson, in following in Governor Bernard's footsteps. Hostility to his administration, already at first uncomfortably strong, was greatly increased by events connected with the Boston massacre, and later by his attempt to enforce the infamous tea tax. Tainted, because of avarice and duplicity, he soon found himself discredited and destitute of that support without which it was impossible to discharge his official duties acceptably either to himself or to the colonists; and early in 1774, to the great gratification of a large proportion

¹ *Boundary MSS.*, II, 162, 163.



DE MONTS' COLONY MEMORIAL, ON ST. CROIX ISLAND.
Unveiled June 25, 1904.

of the people of the province, he obtained royal permission to leave the country. Born in Boston, son of one of its prominent merchants, a graduate of Harvard College, having held four of the highest offices in the province, he found the signs of a new era more and more distasteful to him; and on June 1st, going on shipboard, following the example of his predecessor in the governorship of the old Bay Colony, he sailed for England, where he spent the remainder of his days.

CHAPTER II.

THE TREATY OF PARIS AND THE BEGINNINGS OF THE BOUNDARY CONTROVERSY.

AT the opening of the Revolutionary War the colonists indulged the hope that the inhabitants of Canada and Nova Scotia would join them in the struggle for American independence. To political conditions in these remote provinces Washington turned his attention in the summer of 1775, soon after assuming command of the army at Cambridge; and in the early autumn of that year preparations were completed for military operations designed to secure in these British possessions the co-operation of liberty-loving men. In an address to the Canadians in connection with this movement, Washington used these words: "The cause of America and of liberty is the cause of every virtuous American citizen, whatever may be his religion or his descent. Come, then, range yourselves under the standard of general liberty." The appeal, however, failed to awaken the desired response. The hopes that the patriots farther down the coast had ardently entertained were soon shattered by tidings of the disastrous results of Arnold's expedition, and of Montgomery's lamented death before the walls of Quebec.

No similar efforts in this direction were made at any later period during the war. In both Canada and Nova Scotia,¹ however, there were some whose aspirations were as fervid and forceful as were those of the men who fought on Revolutionary battle fields; and these, sooner or later, found their way across the border and united their fortunes with those fighting for American independence. As the war drew to a close, however, and before it was known on which side victory would rest, questions with ref-

¹The Province of New Brunswick was not set off from Nova Scotia until 1784.

erence to the boundary between Massachusetts and Nova Scotia continued to be raised. Especially was this true among those who lived near the border, to whom it was a matter of no slight importance whether, with the return of peace, they would be left in the territory of those with whom they were in sympathy as to governmental relations, or on the other side. The Loyalists who had taken refuge at Penobscot, now Castine, near the mouth of the Penobscot, were drawn thither not only because it was a British military stronghold, but from their belief that the close of the war would find the whole Penobscot country under permanent British rule, and the Penobscot River, not the St. Croix, the boundary between Massachusetts and Nova Scotia. Doubtless they were aware of the king's intention, in the construction of Fort St. George at Penobscot, to furnish security for the Loyalists and their families by erecting into a province the tract of country that lies between the Penobscot River and the river St. Croix.¹ At such Loyalist hopes and expectations Massachusetts aimed a blow in dispatching thither the Penobscot expedition in the summer of 1779. Its disastrous failure was a sore disappointment to patriot hearts throughout New England and beyond. In fact, it served only to strengthen Loyalist convictions in connection with the unfoldings of the larger royalist scheme in their behalf, approved by the British cabinet August 10, 1780, and by the king on the following day. This scheme involved the separation of the "country lying to the northeast of the Piscataway River" from the Province of Massachusetts Bay, and the erection of "so much of it as lies between Sawkno [Saco] River and the St. Croix, which is the southwest boundary of Nova Scotia into a new province, which, from its situation between the New England province and Nova Scotia, may with great propriety be called New Ireland."² Dr. John Calef, formerly of Ipswich,

¹ Letter of Lord Germaine to Sir Henry Clinton, September 2, 1775. *Collections of New Brunswick Historical Society*, No. 9, 525, 526.

² *Maine Historical Society Coll.*, Third Series, I, 147, 148. See also *Ib.*, First Series, VII, 201-206, and *Collections of New Brunswick Historical Society*, No. 9, 485 and seq.

Massachusetts, as agent for the inhabitants of the Penobscot country, was in London in the summer of 1780, in the interest of these Loyalists.

But as the Revolution drew to a close this proposed colony of New Ireland failed to find a place in the unfolding of new world events. It is said that the scheme ceased to receive governmental support after the appearance of an opinion rendered by Lord Loughborough, the attorney general of England, who argued that inasmuch as the charter of the Province of Massachusetts Bay made the river St. Croix its eastern boundary, its rights would be invaded if either the Saco, the Kennebec or the Penobscot was made the eastern limit of the province. Evidently Doctor Calef still hoped that the boundary of Nova Scotia would be carried as far westward as the Penobscot; but after he had spent two years in England in the interest of the Penobscot Loyalists, the failure of his mission was announced one day by Lord North, who declared the end of the whole matter in the sorrowful, doubtless agonizing words, "Doctor, we cannot make the Penobscot the boundary; the pressure is too strong!"¹

But between the Penobscot and the St. Croix rivers there were others, who had not been dreaming these dreams of the Loyalists in the Penobscot territory, or those of the king and his ministers in London. They were the settlers in the scattered communities of eastern Maine, of which Union River, Gouldsboro, Narragagus, Pleasant River and Machias were the most prominent. In all of these places there were men who had espoused the cause of American independence and were ready to respond to any call for service in maintaining it. Especially was this true of the men of Machias, who, beginning with the capture of the armed "King's Tender" *Margaretta*, June 12, 1775,² exhibited throughout the struggle a spirit of heroism and devotion to the interests of the United Colonies without which, in all probability, the whole

¹ *Maine Historical Society Coll.*, Third Series, I, 156, 157.

² *Ib.*, Second Series, II, 1-17. *Baxter MSS.*, XIV, 280-282.

country east of the Penobscot would have fallen, sooner or later, into British hands.¹ The advanced position of these settlers with reference to the frontier made boundary matters not only important with them but urgent. The presence of the Loyalists at Penobscot in large numbers, and their preparations for permanent occupation by the erection of dwelling houses, etc., were irritating evidences of cherished purposes concerning the removal of the western boundary of Nova Scotia to the Penobscot; and the representations made by these Machias and other settlers to the Massachusetts authorities concerning these well-known Loyalist hopes and purposes were accompanied by strong appeals against any territorial abridgements in the peace arrangements following the war.

In any reference to such appeals mention should be made of Colonel John Allan,² who, although born in Nova Scotia, and living there at the opening of the Revolutionary War, heard the appeal for American independence, and finding himself out of harmony with Nova Scotians generally, leaving valuable possessions, he fled the country and made his way to Machias. After conferring with the little band of heroes there, he sought out the leaders of the patriot cause farther down the coast, especially in Boston, New York and Philadelphia, and called their attention to conditions on the border of Nova Scotia, urging especially the importance of securing early friendly relations with the Indians in that region, and of maintaining such relations. He also conferred with members of the Continental Congress and visited General Washington at his headquarters. His appeals received sympathetic consideration. His character and ability, as well as his knowledge of conditions in Nova Scotia and along the boundary, together with his acquaintance with the Indians on both sides of the line, won for him a most cordial reception. As a result of his

¹The *Baxter MSS.*, Volumes XIV-XX, contain many letters, documents and reports referring to affairs in the Penobscot country at this time.

²His father was a British officer, who had received a large grant of land in the territory once occupied by the banished French Acadians.

appeal military affairs along the eastern boundary were placed in charge of the Massachusetts authorities, by whom, on September 17, 1777, John Allan was appointed colonel of the troops ordered to be raised and stationed at Machias. He was also given the command of the eastern Indians already in the service of Massachusetts, or who soon would be in that service. How faithfully and self-sacrificingly, until the close of the war, Colonel Allan discharged the duties thus laid upon him is recorded with great fullness in the Revolutionary archives of Massachusetts.¹

In the last years of the war Colonel Allan was especially interested in matters pertaining to the boundary. In a letter to the president of the Massachusetts Council, April 16, 1779, he stated, from what he could learn, that the British government expected to be compelled to declare the independence of the thirteen states, but was determined "to keep Canada and Nova Scotia, extending its line of territory to the Kennebec River." In the following November, also writing to the president of the council, he announced his purpose, with the approval of the Massachusetts authorities, to move "to the River St. Croix or Magaguadawaya [Magaguadavic], the boundary between Acadia and Province of Maine, settled formerly between the French and British Courts."² Plainly, the writer had in view not two rivers, the St. Croix and the Magaguadavic, but one river, known by some as the St. Croix and by some as the Magaguadavic. This is an early mention of the Magaguadavic as the St. Croix of the boundary. Evidently Colonel Allan had known the river by its Indian name; but in boundary discussions on the American side of the line the designation St. Croix, of Mitchell's map of 1755, and of the later survey of 1764, was taking the place of the Indian name. This fact again came into view in a letter from Colonel Allan to the governor of Massachusetts, dated March 8, 1782,³ in which the writer

¹In the *Baxter MSS.*, Volumes XIV-XX, such reports and letters by Colonel Allan will be found.

²*Ib.*, XVI, 364; XVIII, 62.

³The preliminary treaty of peace was signed November 30, 1782.

proposed, if not otherwise ordered, "moving immediately near to the River St. Croix, the boundary between the Province of Maine and Acadia, where the Indians have agreed to join us, by which I shall be more able, with less expense, to negotiate the business ordered by Congress."¹

Already, accordingly, Colonel Allan had been in communication with the governor of Massachusetts concerning the boundary, and was emphasizing the advantages the victorious colonists would secure by making the Magaguadavic the new nation's eastern boundary. Practically the war was now ended. Cornwallis surrendered his army at Yorktown October 18, 1781, more than four months before Colonel Allan's letter was written. The tidings of the surrender reached England, by way of France, November 25th. "It is all over," exclaimed Lord North, and in his agitation he repeated the words again and again. It was all over; but George III was as stubborn as ever. "No difficulties," he said, "can get me to consent to the getting of peace at the expense of a separation from America." With the downfall of Lord North's ministry in March, however, the king was compelled to yield, and peace negotiations, in the face of many hindrances, were at length commenced.

The representatives of the United States in these negotiations were John Adams, Benjamin Franklin, John Jay and Henry Laurens. The meetings of the negotiators were held in Paris. At the outset, on the part of the Americans, the proceedings were opened by Franklin only, Laurens being with Adams at the Hague (where the latter, as minister, was engaged in negotiating a Dutch loan), both evidently expecting that England would not be in any haste in yielding independence to the victors. Jay, who in the treaty was mentioned as "late president of Congress and chief justice of the State of New York and minister plenipotentiary from the United States at the court of Madrid," was still in Spain. Accordingly Franklin, on account of probable changes in the British cabinet, rightly deemed it desirable that no time

¹*Baxter MSS.*, XIX, 438.

should be lost in entering upon the consideration of treaty matters; and he opened negotiations with Richard Oswald, one of the British secretaries of state, who had been sent to Paris for the purpose. In his first interview with Mr. Oswald, Franklin suggested that Canada should be ceded to the United States, adding that such action on the part of Great Britain would assure "a durable peace and a sweet reconciliation." Of course the suggestion was not taken seriously. Mr. Oswald, however, was ready to grant complete independence to the thirteen colonies, with the Penobscot River as the boundary between the two countries, and with provision for the security of the Loyalists and of British debts. Without waiting for the appearance of his colleagues Franklin proceeded to draft such articles of peace as he thought would be acceptable to his countrymen. These he submitted to Mr. Oswald on July 10, 1782, and with them the latter returned to London. Franklin's associates on their arrival, however insisted upon a new draft, and such a draft, though on lines similar to that made by Franklin, was prepared by Jay. Adams, who had brought with him important papers furnished by the Massachusetts Council, said he was willing to yield his convictions with reference to the Loyalists and the British debts, but as to boundary matters he had taken pains to inform himself, and he was determined not to yield the opinions he had formed, which were based as he believed, on long established rights. In his diary, Mr. Adams gives us interesting glimpses of these matters, while the treaty was under consideration. In an entry dated November 10 1782, he makes mention of a conversation he had one day with Count Vergennes, the French minister of foreign affairs, who asked him concerning the progress of the negotiations. "I told him," Mr. Adams records, "we divided upon two points, the Tories and the Penobscot; as it was impossible to believe that my Lord Shelburne, or the nation, cared much about such points. The count remarked that the English wanted the country there for masts. I told him that I thought there were but few masts there; but that I fancied it was not masts, but Tories that again

made the difficulty. Some of them claimed lands in that territory, and others hoped for grants there. I took out of my pocket and showed him the record of Governor Pownall's solemn act of bringing a leaden plate with this inscription: 'May 23, 1759. Province of Massachusetts Bay, Penobscot, Dominions of Great Britain. Possession confirmed by Thomas Pownall, Governor.' This was planted on the east side of the River Penobscot, three miles above marine navigation. I showed him, also, all the other records,—the laying out of Mount Desert, Machias, and all the other towns to the east of the River Penobscot, and told him that the grant of Nova Scotia by James I to Sir William Alexander, bounded it on the River St. Croix."¹ This is another early mention of the St. Croix River in connection with the treaty negotiations, and is what might have been expected from one who was more familiar with matters concerning the boundary than any other of the American negotiators. Eight days later, November 18th, Mr. Adams made this entry in his diary: "Returned Mr. Oswald's visit. We went over the old ground concerning the Tories. He began to use arguments with me to relax. I told him he must not think of that, but must lend all his thoughts to convince and persuade his court to give it up; that if the terms now before the court were not accepted, the whole negotiations would be broken off."²

In Franklin's preliminary conversations with Oswald and in these notes, hastily penned by Mr. Adams, we get only a glimpse of boundary matters. It is known, however, that before the arrival of Mr. Adams, Franklin and Jay were willing that the settlement of the northeastern boundary should be left to commissioners to be appointed after the ratification of the treaty. This was in accordance with the instructions given by Congress to the American negotiators. As late as October, 1782, Lord Shelburne in the interest of the Loyalists, returned to conversations concerning the boundary, and proposed that either the Penobscot, or the

¹ *Maine Historical Society Coll.*, First Series, VI, 335, 336.

² *Ib.*, Second Series, I, 396, 397.

Kennebec, or the Saco, should be made the boundary, still having in view the New Ireland, already mentioned, as a permanent refuge for the expatriated Loyalists. Evidently considerable irritation was manifested by the American negotiators at this insistence on the part of the British secretary, and it seems to have been the occasion of the entries made by Mr. Adams in his diary. He knew how strong the feeling was in his own state, especially in the eastern parts, with reference to the boundary; and he made a vigorous use of the maps and documents that had been placed in his hands, not yielding to the consideration of any other boundary than that of the St. Croix River.

At length all differences were harmonized, and November 20, 1782, the plenipotentiaries of both countries signed articles of peace known as the preliminary treaty. These provisional articles, however, laid only the foundations of peace. By a declaration in the preamble, the treaty was not to be concluded "until terms of peace should be agreed upon between Great Britain and France, and his Britannic Majesty should be ready to conclude such treaty accordingly." These preliminaries having at length been effected, the definitive treaty was signed September 3, 1783.¹

The negotiators of the treaty were not unmindful of the fact that in such instruments boundary descriptions afford opportunities for international disagreements; and in order to provide if possible against anything of the kind in connection with their own work, they introduced the article of the treaty which refers to the boundary in these words: "And that all disputes which might arise in future, on the subject of the boundaries of the United States may be prevented, it is hereby agreed and declared that the following are and shall be the boundaries, viz." The northerly line of the northeastern boundary is then described as follows: "From the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source

¹And still events moved slowly. Tidings concerning the signing of the provisional articles of peace did not reach the United States until late in March, 1783.

of the St. Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River." The easterly boundary was described in these words: "East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence."

Notwithstanding the mention in the treaty of such important topographical features as "the northwest angle of Nova Scotia," "the river St. Croix," the "source" of that river and certain "Highlands" at the aforesaid angle, their insertion did not prevent the disputes which, from the history of treaties, the negotiators endeavored to avoid. Indeed, their mention, as soon as the provisions of the treaty were made known, became even the occasion of controversy. At first this was because of the attitude of the Loyalists at Penobscot. They knew, as has already appeared, that in England all hope of making the Penobscot River the western boundary of Nova Scotia had been abandoned; but they still clung to their homes, irritating the people of the Penobscot country and those dwelling farther down the coast. In a letter to Henry Laurens, one of his associates, Mr. Adams wrote: "I wish I could see more serious preparations for vacating Penobscot. Our people will not feel like freemen in friendship with Great Britain until this is done."¹ Indeed so intense were the expressions of public sentiment on account of this delay that the General Court of Massachusetts, February 8, 1783, appealed to Washington, asking the co-operation of the army in a proposed attempt to compel the retirement of the British garrison at Penobscot. In his reply to this appeal, Washington referred to the fact that all military operations were now subject to the action of Congress, and on this account he advised a wise exercise of patience in place

¹*Maine Historical Society Coll.*, Second Series, I, 397.

of the proposed aggressive measures.¹ The Loyalists finally saw that added delay was undesirable, and plans were adopted for change of location.

During the summer of 1783, Colonel John Allan called the attention of Governor Hancock to the beginnings of encroachments at St. Andrews Point; and by direction of the governor he returned to the boundary country and continued his investigations with reference to these Loyalist movements. In a report, dated Boston, December 13, 1783, he gave a detailed account of such matters as came under his observation during this service. He arrived at Passamaquoddy September 23rd, and found a number of British surveyors exploring the rivers emptying into Passamaquoddy Bay. He also found that a number of British settlers had "taken possession of St. Andrew's Point, twenty miles eastward of St. Croix."² Two public surveyors were there for the purpose of laying out the township, and townships in the vicinity. In fact, conditions were such that Colonel Allan asked for a conference. At this conference and on several other occasions, he remonstrated against these settlement proceedings, which plainly had reference to the boundary; and when, October 3rd, two large transports and several smaller vessels arrived at St. Andrews from Penobscot with about forty families, he "cautioned them at their peril not to land any inhabitants." October 17th, having received an invitation from the Refugees to another conference, he explained to them "their precarious situation," and also his own views as to "which was the true St. Croix." The Refugees denied any intention of encroachment upon the territory of the United States, insisting that they were there by order of the British government; and inasmuch as the season was so far advanced, they asked not to be compelled again to change their location before spring. Still

¹*Baxter MSS.*, XX, 188, 189.

²*Boundary MSS.*, State Library, II, 344, and VII, 248. The direction "eastward" in this citation is evidently an error of the copyist and should be *westward*, as Colonel Allan regarded the Magaguadavic as the St. Croix of the boundary, and St. Andrews is west of the Magaguadavic.

After in October, several more families landed at St. Andrews, and a number of houses were erected. "Consequently, all I could do," Colonel Allan continued, "was to warn them off, waiting until the further pleasure of the government was known." Referring to various conjectures concerning the St. Croix River of the treaty, the report continued: "The drafts lately from Europe point out the westerly branch; whether this is by authority or not I cannot say; but I am convinced that should any other river in the Bay of Passamaquoddy except that which was agreed upon formerly between the courts of France and Great Britain, a perpetual scene of confusion and trouble must be the consequence between the subjects of both nations, as all the other rivers branch off different ways, so as to make it impossible how to ascertain the proper course, when [while] this river [the Magaguadavic], from its situation, length and course (without branches) leads to the mountains [Highlands]. 'This,' the old Indians assert, 'was the reason why this river was formerly agreed on as the line between Nova Scotia and Massachusetts.'"¹

Before closing his report, Colonel Allan referred to a company of wealthy Refugees, who were planning to engage in lumber operations on a large scale at Passamaquoddy. Mention was made of Robert Pagan,² formerly of Falmouth, Casco Bay, as one of the more prominent among them. "Their interest with the government has given them an opportunity of procuring a number of inhabitants, a great part British soldiers."³ With these they mean to take possession, and once fixed suppose they cannot be removed, whether the land falls eastward or westward of the line. So that if the ancient river St. Croix is intended as the boundary, it will

¹ *Boundary MSS.*, State Library, First Series, II, 348; VII, 251, 252.

² He was one of three brothers who emigrated in 1769 from Glasgow, Scotland, to Falmouth, now Portland, where he had a large store on the corner of India and Fore streets. He married a daughter of Jeremiah Pote, another Falmouth royalist.

³ These were disbanded soldiers to whom grants of land were given by the government of Nova Scotia.

be highly necessary some steps should be immediately taken to remove those settlers from St. Andrews."¹

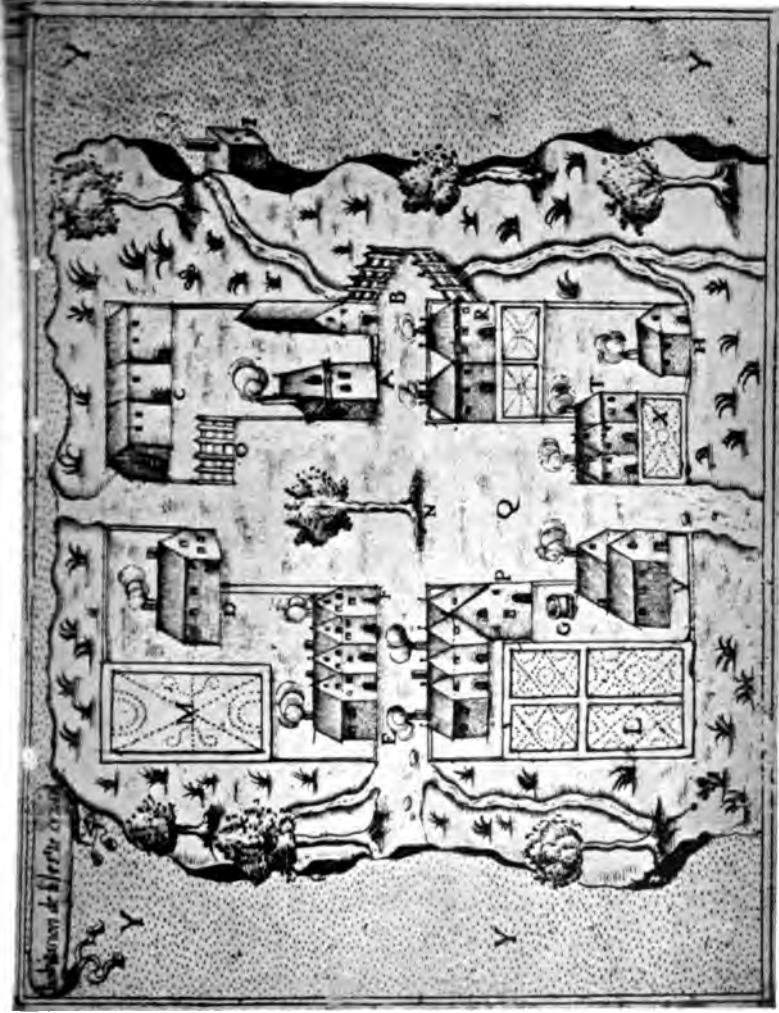
In fact, as early as October 23, 1783, so many reports of conditions on the border had reached the members of the General Court of Massachusetts that the governor and council were requested to ascertain the true state of proceedings there, in order that if the reports were true they might be communicated to Congress. In accordance with this action a committee was appointed by the governor and council to take the matter into consideration, and Dr. Aaron Dexter, who had recently arrived in Boston from Nova Scotia, and Mr. Charles Morris, the king's surveyor, appeared before the committee, and stated that on their side of the boundary the Schoodic or Great St. Croix was regarded as the separating line between the two countries, and they were confident, that if there was any cause for dispute in the matter, the authorities on their side of the line were desirous that it should be settled in the most amicable manner as soon as possible.²

This information, together with Colonel Allan's letter of December 13, 1783, and another from the same source dated December 25th, addressed to the president of the Congress of the United States, were laid before Congress, and on January 29, 1784 that body adopted a resolution calling upon the governor of Massachusetts to make inquiry concerning any alleged encroachments upon United States territory, and recommending that in case such encroachments had been made, the attention of the governor of Nova Scotia should be called to them, "requesting him in a friendly manner, and as a proof of that disposition for peace and harmony which should subsist between neighboring states, to recall from off the said territory the said subjects of his Britannic Majesty."³ Penobscot, the last portion of the soil of the United States held by British troops, was not evacuated until January 15

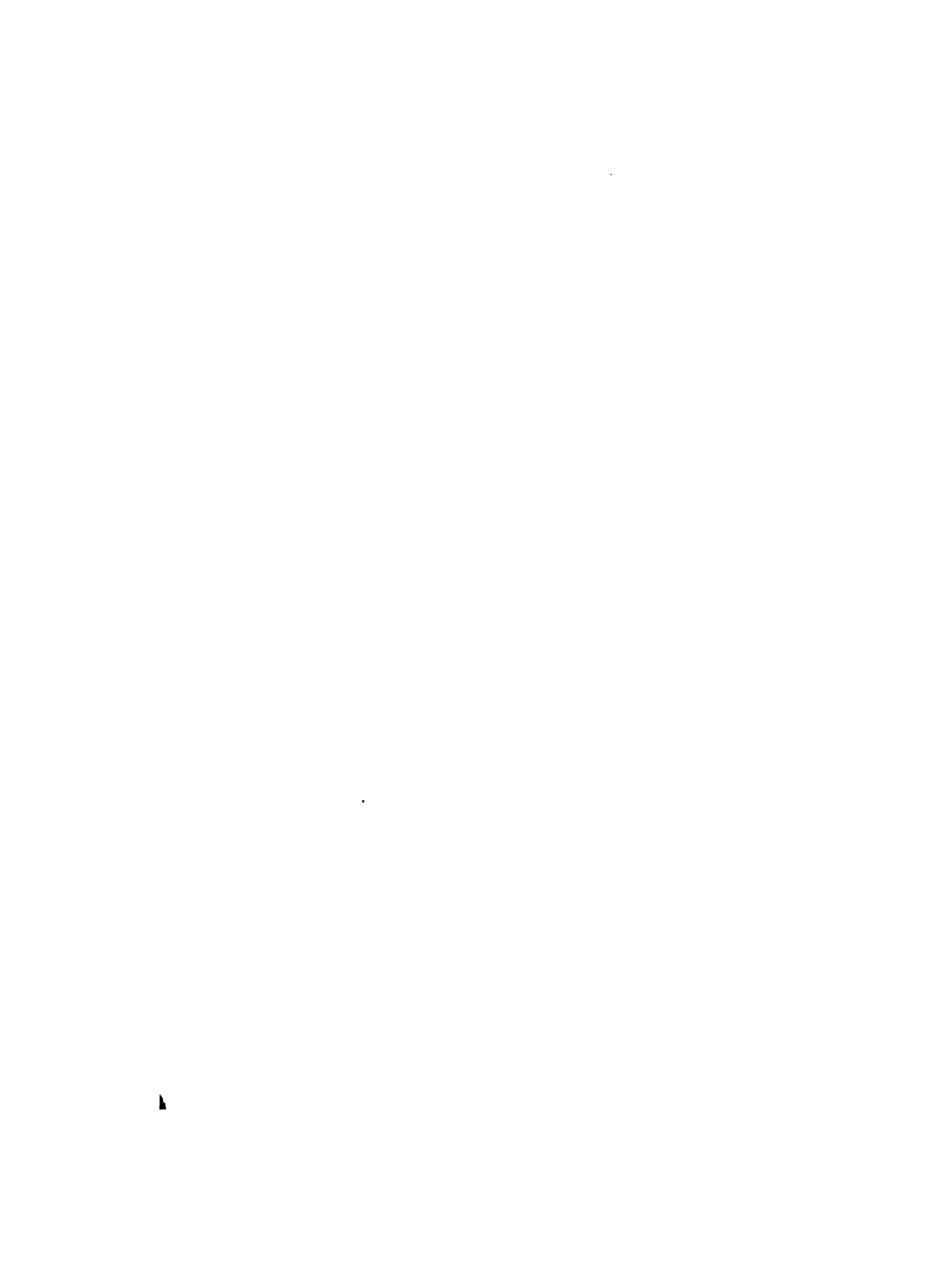
¹*Boundary MSS.*, State Library, First Series, II, 344-350.

²*Ib.*, First Series, II, 350-352.

³*Manuscript American Reply, Treaty of Ghent*, Maine Historical Society 196, 197.



CHAMPLAIN'S SKETCH OF THE ISLAND OF ST. CROIX AND BUILDINGS, 1604.



1784.¹ The number of Loyalists who removed from Penobscot to St. Andrews on Passamaquoddy Bay was about six hundred.²

As they paid no heed to Colonel Allan's warnings, and reports of their increased activities reached Boston, the General Court of Massachusetts, July 7th, adopted a resolve for the appointment of a committee of three to make an investigation of reported British encroachments on the eastern boundary. The governor placed on this committee Generals Lincoln and Knox and Mr. George Partridge. On account of illness, Mr. Partridge was unable to serve, and Colonel John Allan was added to the committee.³ In the latter part of August, 1784, these gentlemen made their way to St. Andrews, where they found quite a large number of British subjects, who in the opinion of the committee were clearly within the limits of Massachusetts. The result of their investigations, as presented in a report dated Boston, October 19th, was as follows: "There are three very considerable rivers, which empty themselves into the Bay of Passamaquoddy, which is from five to seven leagues wide. The eastern river falls into the Bay about a league from the head of it, and perpendicular to the eastern side. The middle river falls into the Bay far on the westerly side of the head of it, and in a direction parallel therewith. The western river falls into the Bay about six leagues from the head of it, on the westerly side and nearly perpendicular to it, all of which in late British maps are called St. Croix. The first is by the Indians called Mackadavia [Magaguadavic], the second Schudac [Schoodic], and the third Cobbescook [Cobscook]. From every information the subscribers could obtain on an inquiry of the Indians and others, the eastern river was the original St. Croix. This is about three leagues east of St. Andrews, where the British inhabitants have made a settlement."

Further, they had written to Mr. Jay, requesting him to give

¹ *Collections of the New Brunswick Historical Society*, No. 9, 529.

² *Maine Historical Society Coll.*, Second Series, II, 400.

³ *Baxter MSS.*, XX, 396.

them information whether the commissioners for negotiating the peace confined themselves in tracing the boundaries of the United States to any particular map. Since their return, they had received his answer, stating that Mitchell's map was the only one that the commissioners used, and on that they traced the boundaries agreed to, "a fact," they added, "which must facilitate an equitable decision of the matter.'

Before concluding their report, the subscribers referred to the rapid improvements made by the Refugees at St. Andrews, regarding these as an embarrassment in any settlement of the boundary line agreeable to the treaty of peace. They accordingly suggested the propriety of quieting in their possessions such British subjects as were desirous of becoming inhabitants of the United States.¹

This report, on its presentation to the General Court of Massachusetts, October 20, 1784, was accepted as establishing the claim of the United States with reference to the eastern boundary, the character of the members of the committee giving to the report great weight. Generals Lincoln and Knox had achieved distinction in the Continental Army during the Revolutionary War, while no one on this side of the border was so familiar with matters pertaining to the boundary at the disputed point as Colonel John Allan. Accordingly, on November 12th, Governor Hancock wrote to Governor Parr of Nova Scotia, making mention of the boundary investigations instituted by the General Court, and inclosing a resolution and proclamation of the Congress of the United States with reference to boundary encroachments. "The government of this State," he said, "is no less desirous than the United States in Congress assembled of cultivating that peace and harmony which I hope will ever subsist between the citizens of the States and the subjects of his Majesty." The letter closed with the request that the governor of Nova Scotia would recall to

¹ *Boundary MSS.*, State Library, II, 276-279.

British territory the Loyalists who had planted themselves within the limits of Massachusetts.¹

At this time the territory of Nova Scotia west of the St. John River had been erected into a separate province since known as New Brunswick; and Governor Parr, in a letter dated December 7, 1784, informed Governor Hancock that he had forwarded his letter to the governor of New Brunswick, and also to Lord Sydney, one of his Majesty's principal secretaries of state.

Meanwhile General Rufus Putnam had been sent into the boundary country for the purpose of obtaining added information in reference to the rivers, and also to make such surveys of the land as would be helpful in considering differences that had arisen. In a letter addressed to a committee of the General Court December 27, 1784, General Putnam presented the results of his investigations, furnishing valuable supplementary information.²

The governor of New Brunswick naturally awaited instructions from the king's ministers before answering Governor Hancock's communication addressed to Governor Parr; and it was not until June 21, 1785, that Governor Carleton submitted the following statement: "I have it in charge to inform your excellency that the Great St. Croix, called Schoodick by the Indians, was not only considered by the court of Great Britain the river intended and agreed upon by the treaty to form a part of that boundary, but a numerous body of the loyal Refugees, immediately after the peace, built the town of St. Andrews on the eastern bank thereof. And in fact, it is the only river on that side of the province, of either such magnitude or extent, as could have led to the idea of proposing it as a limit between two large and spacious countries."³

In these words we have an official statement of the British case thus early formulated with reference to the boundary controversy. While Governor Carleton entertained no doubt of Governor Han-

¹ *American State Papers*, I, 92.

² A reproduction copy of General Putnam's manuscript Journal, with maps, is in the possession of the Maine Historical Society.

³ *American State Papers*, I, 95.

cock's concurrence with him in observing the provisions of the treaty of 1783, he expressed the hope, in case any further questions should arise between the two governments, that they would be considered "with a temper and attention essential to the preservation of national peace and harmony." By action of the General Court of Massachusetts, July 1, 1785, Governor Carleton's letter was transmitted to the Massachusetts delegates in Congress, to be communicated by them to the Congress itself.

Meanwhile New Brunswick officials continued to assert authority over the islands in Passamaquoddy Bay. James Avery, a Massachusetts official having duties that brought him into the boundary territory, addressed a letter to Governor Bowdoin, August 23 1785, describing conditions as they came under his observation "Moose Island," he said, "is large and well situated for trade and has a number of worthy inhabitants settled on it. A few day ago Mr. Wier¹ [Wyer], high sheriff of Charlotte County, posted up advertisements on the island, directing the inhabitants to attend the courts at St. Andrews as jurymen. This alarmed the inhabitants as they were threatened, in case of refusal, to be deprived of their estates. Some weak and designing minds were for complying; others determined not [to attend] at all events. Application was made to me by Colonel Allan, the naval officer, Colonel Crane Major Trescott, with a number of other principal gentlemen, to do something to counteract the proceedings of Mr. Wier, as it would be very detrimental to the claims of our government in settling the boundary in regard to the islands for the inhabitants to obey and acknowledge the jurisdiction of Great Britain. Therefore, I went on to the island, and warned them (as a justice of the peace that as they were subjects of this Commonwealth, not to obey the orders of any other power whatever. . . . Mr. Wier made use of many arguments to show the propriety of their claims to all the islands; among others he said, before the war the inhabitants on all of them, in any of their disputes, applied to magis

¹ He was a son-in-law of Jeremiah Pote, and a former resident of Falmouth now Portland, Maine.

trates belonging to Nova Scotia for redress, and acknowledged themselves subjects of that province; and the [province of] Massachusetts not asserting any right over them was tacitly acknowledging it to be so."¹

September 9, 1785, Governor Bowdoin laid this communication before the council, and requested its advice with reference to it; whereupon the governor was directed to inform Mr. Avery that his vigilant attention to these matters was highly approved, and he was directed to inform the inhabitants of Moose, Dudley and Frederick islands, "all lying to the westward of Schoodic river," that the said islands are within the jurisdiction of this commonwealth, and that the inhabitants were expected to conduct themselves in every respect as became true and faithful subjects.² Governor Bowdoin also informed Governor Carleton of this encroachment upon the territorial rights of Massachusetts. In his reply, October 18, 1785, Governor Carleton, while referring to the action of the sheriff of Charlotte County as without any special advice or direction of the judicial officers of the province, expressed the opinion that the sheriff, in considering Moose Island as within the county of Charlotte, was warranted in his action not only by the limits of his bailiwick, but by the express terms of the treaty of Paris, which reserved to Great Britain all "such islands as now are or heretofore have been within the limits of the province of Nova Scotia."³

Massachusetts lost no time in communicating this information to the national government, and September 22, 1785, Mr. Jay, the secretary of state for the United States, suggested that inasmuch as one encroachment always paves the way for another, "the Commonwealth of Massachusetts be advised by Congress to proceed without noise or delay, to garrison such places in their actual possession as may be most exposed. Your secretary pro-

¹Manuscript *American Reply, Treaty of Ghent*, Maine Historical Society, 222, 223, 225.

²Ib., 227.

³*Boundary MSS.*, State Library, First Series, II, 353.

poses by these garrisons to support the habitants in their allegiance, and to overawe New Brunswick peace officers, whom impunity might tempt to be insolent and troublesome."¹ Congress, however, made no attempt to protect exposed settlers in accordance with this suggestion, but resolved, October 13th, to transmit to the American minister in London the information it had received, with instructions to arrange for a settlement of these boundary differences by negotiations, or by commissioners mutually appointed for such a peaceful settlement.²

February 10, 1786, Governor Bowdoin, in a message to the General Court of Massachusetts, informed its members of the action of the high sheriff of Charlotte County, New Brunswick, in seizing one of the inhabitants of Moose Island and telling him he must obtain bail or go to jail. As a citizen of the United States, the man denied the sheriff's authority; and when the sheriff called on some of the other inhabitants of the island to assist him in carrying off his prisoner and they refused, he proceeded to Campo Bello for aid from one of the British ships. Also, July 6, 1786, Governor Bowdoin received information of the seizure of two American vessels as they lay at anchor near the western shore of the west passage into Passamaquoddy Bay. In a message to the General Court, July 7, 1786, referring to this "most daring insult upon the dignity of this Commonwealth and the United States," Governor Bowdoin again asserted the right of Massachusetts to the islands in question—Moose, Dudley and Frederick—in opposition to what he regarded as "a disposition to exclude us from the navigation of that Bay," and "a violation of the definitive treaty of peace." Whereupon the governor was authorized, with the advice of the council, to take such further measures for supporting the territorial claims of the commonwealth as he should deem necessary.³

¹Ganong, *Transactions of the Royal Society of Canada*, 1901-1902, 283.

²*American State Papers*, I, 96, 97.

³Manuscript *American Reply, Treaty of Ghent*, Maine Historical Society, 241-246.

These clashings made it increasingly desirable that the boundary line should be definitely determined as soon as possible. The beginning of a new effort in this direction was made February 1, 1790, when the General Court of Massachusetts instructed Governor Hancock to write to the president of the United States, and call his attention to continued British encroachments on the eastern boundary of the commonwealth. He was also requested to forward to the president such documents as might be necessary to substantiate the alleged facts.¹ The governor complied, expressing the wish that Congress would direct the way in which a proper and speedy inquiry might be made. Such an inquiry, he thought, would have a tendency to prevent added disagreeable contentions. The letter and documents were received by the president on February 17th, and on the following day he transmitted the letter and action of the General Court to the Senate of the United States, while the documents were deposited with the secretary of state for use as needed. In a report on March 9th the Senate committee, to which these communications were referred, recommended that a representation of the case should be made to the court of Great Britain. If the matter could not be amicably adjusted, a proposition should be made for the appointment of commissioners to consider and render a decision with reference to the differences that had arisen. Especially it was recommended that measures should be adopted for taking the testimony of John Mitchell and Nathan Jones, who were appointed by Governor Bernard, in 1764, to "ascertain the river St. Croix."²

But notwithstanding the urgency of aggrieved parties in the boundary territory, supported by the people of Massachusetts, the national government, for several years, seemed to give little heed to boundary matters, apparently having under its consideration affairs in other parts of the country, which were regarded as of much greater importance. With each succeeding year, however, other sources of irritation between the two countries were opera-

¹*American State Papers*, I, 99.

²*Ib.*, I, 100.

tive, and in 1794 the general feeling in all parts of the country was such that President Washington appointed John Jay an envoy extraordinary to the court of Great Britain for the purpose of settling, by a treaty, all existing differences that had arisen between the two countries. Mr. Jay, who was one of the negotiators of the treaty of 1783, and therefore was especially well qualified for this service, arrived in London June 18, 1794. On the 20th he had his first interview with Lord Grenville, and soon after he entered upon the duties entrusted to him.

August 8th, Mr. Jay submitted to Lord Grenville some outlines for a convention and treaty of commerce. One of the items in this outline was recorded in these words: "The boundaries of the United States, as delineated in the said treaty of peace, and every article in the said treaty contained, are hereby recognized, ratified and forever confirmed; but inasmuch as the parties differ as to which is the river intended by the treaty, and therein called the river St. Croix, it is agreed that the said question shall be referred to the final decision of ——— Commissioners," etc.¹

August 30th, Lord Grenville laid before Mr. Jay two drafts or treaties, one for "regulating" all points in dispute between the two countries, and the other for the establishment of commercial rules. In the draft for the settlement of all boundary differences occurred the following: "Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty, and forming a part of the boundary therein described, that question shall be referred to the final decision of commissioners in London."² In his reference to these drafts, Mr. Jay objected to a meeting of the commissioners in London. "Is it not probable," he asked, "that actual views and surveys, and the examination of witnesses on the spot will be necessary?"³

London, as the meeting place of the commissioners, seems not

¹*American State Papers*, I, 486.

²*Ib.*, I, 488.

³*Ib.*, I, 492.

to have been mentioned again, and Halifax, Nova Scotia, was named in the treaty. November 5th, Mr. Jay informed Mr. Randolph, the secretary of state for the United States, that it was almost certain that the draft of the treaty would soon be perfected. On the 16th he could write: "The long expected treaty accompanies this letter; a probability of soon concluding it has caused the packet to be detained for more than a week. The difficulties which retarded its accomplishment frequently had the appearance of being insurmountable; they have at last yielded to modifications of the articles in which they existed, and to that mutual disposition to agreement which reconciled Lord Grenville and myself to an unusual degree of trouble and application."

It was not until March 7th, 1795, however, that the treaty was delivered to the secretary of state for the United States. As might have been expected, in this country as well as in Great Britain, there was criticism and objection when the provisions of the treaty were made known. Washington delayed more than three months before transmitting the treaty to the Senate; and it was not until October 28, 1795, after protracted debate in the Senate, that ratifications were exchanged by the two countries, the announcement of this final action being made to Congress by the president March 1, 1796.¹

¹*Messages and Papers of the President*, I, 192.

CHAPTER III.

THE ST. CROIX COMMISSION.

THE fifth article of Jay's treaty,¹ having reference to "the river truly intended under the name of the River St. Croix," required the appointment of three commissioners, one to be made by the king of Great Britain, one by the president of the United States and one by the two thus selected. March 5, 1796, George III appointed as the British commissioner Thomas Barclay,² of Annapolis, Nova Scotia, a New York Loyalist, who at the opening of the Revolutionary War, not finding himself in sympathy with the colonists in their efforts for independence, joined the British army, first as a volunteer, in 1776, but later as an officer, reaching the rank of colonel, and serving until the close of the war. Then, with other New York Loyalists, he made his way to Nova Scotia, where he was made a member of the Provincial Assembly and became its speaker.

As the American commissioner, President Washington first appointed General Henry Knox. He declined to serve, however, stating among other reasons that he was interested personally in the boundary controversy. Accordingly, May 21, 1796, the president gave the appointment to David Howell,³ professor of law in Brown University, and one of the most eminent members of the Rhode Island bar. He had been a member of the Continental Congress and a strong advocate of the patriot cause.

The first meeting of the St. Croix commission was to be held in Halifax, Nova Scotia; but as it was known to the secretary of

¹ It was designated as the Treaty of Amity, Commerce and Navigation.

² He was a son of Henry Barclay, D. D., rector of Trinity Church, New York, from 1746 to 1764, and was born in New York, October 12, 1753.

³ There is a copy of his commission in the library of the Maine Historical Society.

George B.
Instructions for Civility
and Wellbelov'd Thomas Barclay,
Esq. whom We have appointed Our
Commissioner to act conjointly with
a Commissioner to be appointed in
Our good Friends the United States of
America, and also with a third
Commissioner to be appointed in
the manner prescribed in the fifth
Article of the Treaty of Amity,
Commerce and Navigation con-
cluded between Us and Our said
good Friends on the 10th day of
November 1793.

1. Whereas you have received Our Commission
under the Great Seal of Great Britain, appointing
you Our Commissioner for examining and deciding
together with the Commissioner nominated on
the part of Our good Friends the United States of
America

GEORGE III.
FIRST PAGE OF INSTRUCTIONS TO THOMAS BARCLAY BY GEORGE III.
From the original in the library of the Maine Historical Society.

state in May that Colonel Barclay was in New York, he suggested **that** it would be well for him to have a preliminary conference **with** Mr. Howell, and such a conference was held in Boston, June 27, 1796. At this conference there were conversations with reference to the third member of the commission, but action was **deferred** until the meeting of the commissioners at Halifax.

With other members of his party, Mr. Howell sailed from **Boston**, August 19th, for Halifax, where he met Colonel Barclay. **At** the first meeting of the commission, held August 30th, the **two** members already appointed made choice of Egbert Benson, one of the judges of the supreme court of New York, as the third commissioner. Concerning Judge Benson, Colonel Barclay left **the** following record: "I found it impracticable for Mr. Howell, **the** American commissioner, and myself ever to agree on any **other** person, and that unless I joined in the appointment of **Judge** Benson we must proceed to the unpleasant alternative of **balloting** for the third commissioner."¹ The commission as thus **constituted**, therefore, was composed of two Americans and one **Nova** Scotian, who was an American Loyalist.²

In order to hasten the surveys and other matters connected with **their** work, the two commissioners, finding that it would be more **convenient** for all parties to make St. Andrews their headquarters **for** the present, proceeded thither; and Judge Benson was **re-**
quested to join them there on October 3d.

At a meeting of the commission at St. Andrews, October 4,

¹*Selections from the Correspondence of Thomas Barclay*, by George L. Rives, 62, 63. Mr. Rives was a grandson of Colonel Barclay, and through the late Judge W. L. Putnam, after the publication of this volume of *Correspondence*, he presented his grandfather's valuable manuscript boundary material to the Maine Historical Society.

²Hon. Israel Washburn, in an elaborate monograph on the northeastern boundary controversy, read before the Maine Historical Society May 15, 1879 (*Collections of the Maine Historical Society*, First Series, VIII, 12), states that the commission consisted of "Thomas Barclay, Daniel Howell (Englishmen) and Egbert Benson (American)." This error with reference to Mr. Howell naturally affected unfavorably Governor Washburn's views with reference to the work of the commission.

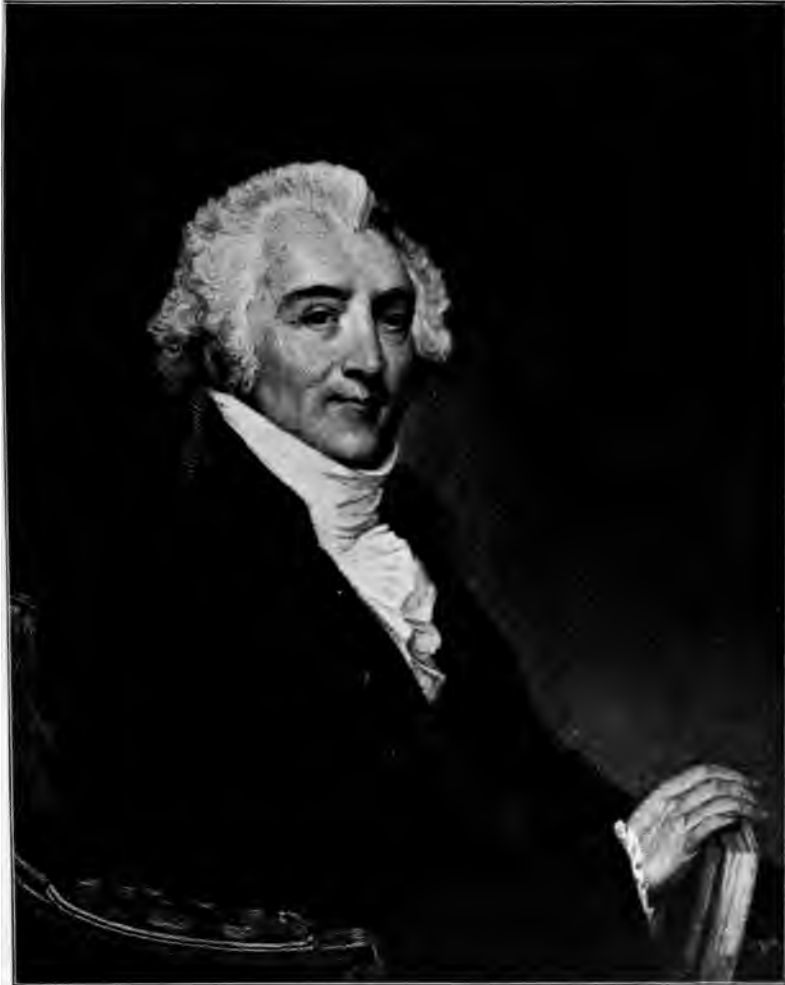
1796, Mr. Benson met Colonel Barclay and Mr. Howell, and the three commissioners were sworn before Robert Pagan, then one of the judges of the court of common pleas for Charlotte County. At this meeting Edward Winslow,¹ of Fredericton, New Brunswick, was made secretary of the commission. Here, also, James Sullivan,² the agent of the United States for conducting the American case before the commissioners, and Ward Chipman,³ the British agent, appeared, presented their credentials, and the organization of the commission having been accomplished, the commissioners entered upon their work.

Mr. Sullivan was the author of a *History of the District of Maine*, then recently published; and Mr. Pickering, secretary of state for the United States, in his instructions to Mr. Sullivan, wrote: "Your researches as the historian of the District of Maine, your reputation as a lawyer and your official employment as the attorney general of Massachusetts, the state most directly interested in

¹He was a descendant of Edward Winslow, governor of the Plymouth Colony in 1633, 1636, 1644. As a royalist he joined the British army in the Revolutionary War, serving as colonel.

²He was born in Berwick, Maine, April 22, 1744. Before the Revolutionary War he was king's attorney for York County. In that war he was an ardent patriot and acted a conspicuous part. He was a member of the Provincial Congress in 1775; in 1776 he was made a judge of the supreme court; in 1779 and 1780 he was a member of the convention that framed the constitution of Massachusetts; and in 1783 he was elected a member of Congress. From 1790 to 1807, he was attorney general of Massachusetts, and its governor in 1807 and 1808. He died December 10, 1808, and was buried in the Granary Burial Ground in Boston.

³A native of Marblehead, Massachusetts, he left Boston with the British troops at the opening of the Revolutionary War, and served in the British army in various military positions. At the close of the war he took up his residence in St. John, New Brunswick. He held important civil positions, among them that of chief justice and president of the province. His father, John Chipman, was an eminent lawyer in Marblehead, and when arguing a case, July 1, 1768, in the court house in Falmouth, now Portland, he was stricken with apoplexy and died. He was buried in the Eastern Cemetery in Portland, and a monument was erected over his grave by members of the Falmouth bar.



JAMES SULLIVAN.

the event, have designated you as the agent of the United States to manage their claim of boundary where their territory joins that of his Britannic Majesty, in his province of New Brunswick, formerly a part of the province of Nova Scotia. . . . The pending decision is to be *final*. Great industry, therefore, will be necessary to collect, and much diligence and ability will be required to arrange and enforce the evidence in support of the claim of the United States. Besides written documents it is possible that living witnesses, if carefully sought for, may yet be found whose testimony may throw much light on, if not positively establish, our claim. To obtain these, if they exist, as well as all written documents, the president relies on your diligent research and inquiry; and in the application of them to support the interests of the United States he assures himself of the utmost exertion of your ability."¹

At this meeting at St. Andrews, the two agents presented written statements, setting forth the claims of their respective governments with reference to the boundary. Mr. Sullivan's statement was as follows: "That a certain river called by the Indians the Magaguadavic and which river empties its waters into the Bay of Passamaquoddy on the northeasterly side thereof, is the River St. Croix in the treaty of peace, concluded between the United States and his said Majesty in the year 1783, and that the same river forms a part of the boundary in the same treaty described."² The claim of the British agent was stated at greater length, but was summarized in these words: "That the said River St. Croix, so originally named by the French in the year 1604, and recognized in the said letters patent [to Sir William Alexander] in the year 1621, and uniformly from the time last mentioned referred to and known as the boundary of the said province of Nova Scotia in all authenticated histories, public documents and acts of State, both in the English and French nations, is the River St. Croix truly

¹ Amory's *Life of James Sullivan*, I, 307, 308.

² *Boundary MSS.*, State Library, First Series, I, 5.

intended by the said treaty of peace."¹ It was specifically mentioned, however, that it was "the western branch of this river, extending itself to the River Penobscot," that "has always been and now is justly, properly and truly called the main branch of the said river by whatever name the same river may at any time have been called, whether Passamaquoddy, Scoudiac or St. Croix."²

On the following day, leaving St. Andrews, the commissioners, agents and their assistants started up the Schoodic River, which, according to the British claim, was the St. Croix of the treaty of 1783. The wind failing, however, they were obliged to return without having accomplished their purpose. Accordingly, they held a meeting at St. Andrews, at which work already performed was reported, and arrangements were made for its completion.

Then, on October 6th, the whole company proceeded to the Magaguadavic River, claimed by the American agent as the river St. Croix of the treaty, viewed the mouth of the river as it empties into Passamaquoddy Bay, and the island, which, according to Mr. Sullivan, had been named Isle de St. Croix by de Monts in 1604. On the 7th, they again visited the Schoodic River, and were shown St. Croix Island in that river, also the small island in its front, and as much of the river as the British agent deemed it necessary as evidence that the island and river corresponded with the description given by Champlain and L'Escarbot. In the evening, after the return to St. Andrews, the commissioners examined under oath some Indians of the Passamaquoddy and Machias tribes, who answered inquiries with reference to rivers, islands, their names, etc.³

After receiving the testimony of the Indians, the commissioners, at a meeting held October 8th, authorized the preparation of a map of Passamaquoddy Bay. They also adopted rules for authenticating copies of records and documents of various kinds, and

¹ *Boundary MSS.*, State Library, First Series, I, 21.

² *Ib.*, First Series, I, 19, 20.

³ *Correspondence of Thomas Barclay*, 65.

for the examination of witnesses, who were unable personally to appear before the commissioners.¹

This account of the proceedings of the commission is obtained for the most part from a letter of Colonel Barclay to Lord Grenville, the records of the secretary furnishing little information except that connected with the transaction of business. From other sources, however, the added fact is derived that before the arrival of the third commissioner, Mr. Howell and Mr. Sullivan explored the Magaguadavic River and interviewed certain chiefs, who confirmed the Indian testimony obtained by Mitchell in 1794, that the Magaguadavic was the river known among the Indians by the name of St. Croix.²

Little could now be done except by the surveyors, who were to continue their work as long as the season permitted. Nor could the arguments of the agents be prepared in full, it was said, until the work of the surveyors was placed in their hands. The commissioners accordingly decided to adjourn and meet in Boston on the second Tuesday in August, 1797.

Before the adjournment, Mr. Sullivan informed Mr. Chipman of his expectation to prove that the negotiators of the treaty of 1783 had in contemplation and believed that the river, called in the treaty the river St. Croix, was the first river west of the river St. John; that they had before them at the time Mitchell's map,³ on which the easternmost river emptying into Passamaquoddy Bay is the river St. Croix of the boundary; that Mr. Jay and Mr. Adams, the surviving members of the peace commission, and Mr. Hartley,⁴ the British plenipotentiary, together with Lord St. Helens and Mr. Whitford, secretary to the British commissioner, who were then present, would confirm this statement as to the river, and

¹ *Boundary MSS.*, State Library, First Series, I, 71-82.

² *Ib.*, First Series, I, 320, and seq.

³ It was a large map, 6 feet 4 inches by 4 feet 4 inches. A certificate on it, signed by John Pownall, secretary of the plantation office, is dated February 13, 1755.

⁴ He had succeeded Mr. Oswald, deceased.

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also in preparing the arguments. December 2, 1796, Mr. Sullivan wrote to Mr. Chipman: "I have been too much engaged in various public avocations to arrange my intended arguments on the St. Croix controversy. . . . The assistance which I flattered myself to obtain is not afforded to me."¹ Nevertheless, January 28, 1797, he had forwarded not only the first part of his argument, but a promise of the remainder by a later conveyance. "The books I refer to in the margin," he added, "are such as are within your reach excepting some which are in public libraries here, and which are out of my power to send you; but you will have access to them all when we shall have the pleasure of seeing you in Boston."² On the other hand, Mr. Chipman was so well pleased with the unfolding of his own argument that in a letter to Colonel Barclay, written at St. John on the same day, he made this mention of the rough draft of his brief, "I feel satisfied with my labor."³

When the commissioners convened in Boston, August 11, 1797,⁴ the arguments of the agents were received and filed by the commissioners. Mr. Sullivan aimed to show by various lines of evidence that the river Magaguadavic is the river St. Croix mentioned in the treaty of 1783 as the river of that name, and

¹ *Ward Chipman MSS.* in the library of the Maine Historical Society. These manuscripts concerning the boundary came into the possession of the society by a noteworthy discovery. Mr. William H. Kilby, of Eastport, Maine, on landing from a steamer at Boston about twenty years ago, noticed on the wharf some bales of waste paper from which manuscript material had fallen. An examination revealed the fact that these bales contained papers relating to the northeastern boundary, and Mr. Kilby obtained from the junk dealer to whom the bales were consigned permission to make an added examination, which showed that these papers had once belonged to Ward Chipman, the British agent connected with the St. Croix commission. After making use of this material for historical purposes, he gave the collection to the Maine Historical Society.

² *Ib.*

³ *Ib.*

⁴ The meeting was not held on the day to which adjournment was made, owing to the illness of Mr. Benson. *Correspondence of Thomas Barclay*, 73.

forming a part of the boundary between the two countries. Especial emphasis was laid upon the fact that on Mitchell's map,¹ which was the map used by the negotiators of the treaty, the river St. Croix empties into Passamaquoddy Bay on its easterly side; that such a river must be found in order to meet the intentions of the negotiators because of their use of this map, and that the Magaguadavic, and the Magaguadavic only, is a river that answers to the St. Croix of Mitchell's map. To this fact, it was said, witnesses would be called, whose testimony would be conclusive. "Upon that map," it was added, "all the boundaries agreed upon were marked and delineated. Whether the river called the Magaguadavic was, or was not, what was formerly known by the name of St. Croix cannot be of much consequence to consider now, because the question before the Board is not what was by the French in ancient times called the River St. Croix, or what was intended by a river of that name in the grant of Nova Scotia by King James to Sir William Alexander; or what was called St. Croix by the French or English before the treaty of Utrecht. The question is what river was truly intended by the River St. Croix in the treaty of peace, and forming a part of the boundaries therein described."²

The British agent in his argument devoted considerable space to an examination of the ancient boundaries of Nova Scotia, calling especial attention to an act of Parliament in 1744, in which it was enacted "that the river, which emptieth itself into Passama-

¹ The map which Mr. Sullivan offered as evidence at this time was the identical copy of Mitchell's map which the commissioners in Paris had before them in negotiating the treaty of 1783. It was found in the office of the secretary of state in Washington, and had on it, traced with a pen or pencil, the boundary line through the middle of the St. Croix River as laid down on that map, and also northward from the source of that river. Inquiries have been made at the department of state with reference to this map in comparatively recent years, but search for it has not been successful. Moore, *International Arbitrations*, I, 39, 40, also 156, 157. It is not in the State House in Augusta, nor is it in the collection of maps in the Maine Historical Society.

² *Boundary MSS.*, State Library, First Series, III, 182, 183.

codic or Passamaquoddy Bay on the western side, and is commonly called or known by the name of St. Croix River, be held and deemed for all the purposes in this act contained to be the boundary line between the Province of Massachusetts Bay and Nova Scotia." This act, he said, mentioned no new boundary, but confirmed and established the river St. Croix as a boundary between Nova Scotia and the territory of New England, already recognized by grants, charters and treaties from the patent to Sir William Alexander in 1621 and acquiesced in by the government of Massachusetts down to the peace of 1783; that treaty intending that no part of Nova Scotia should be ceded to the United States.¹ He also not only presented various lines of evidence in support of his contention that the Schoodic River was the true St. Croix of the treaty, but he sought to break the force of the argument drawn by the American agent from Mitchell's map, and the negotiator's use of it, by a reference to its incorrectness, being made on a very small scale.

The incompleteness of the arguments was asserted by both agents. The surveys had not been finished and made ready for their use. Mr. Sullivan said he had been able to make only a cursory examination of Mr. Chipman's argument. Moreover, the books and documents of various kinds to which his attention had been called by the British agent could not be procured and examined without sufficient time for the purpose. Both agents filed certain depositions, etc., and then, in accordance with an understanding when the commissioners adjourned in 1796 to meet in Boston, the commissioners, August 18, 1797, proceeded to Quincy, Massachusetts, where, in answer to questions asked by the American agent, President Adams, one of the treaty plenipotentiaries in 1783, was examined concerning boundary negotiations.

Mitchell's map, he said, was the only map which was used by the plenipotentiaries who framed the treaty of peace, though other maps were occasionally consulted by the American representatives at their lodgings. Lines at that time were marked on

¹ *Boundary MSS.*, State Library, First Series, IV, 129-169.

Mitchell's map as designating the boundaries of the United States. The British commissioners first claimed to the Piscataqua River, then to the Kennebec, then to the Penobscot, and at length agreed to the St. Croix as marked on Mitchell's map. One of the American ministers first proposed the river St. John, but as the St. Croix was the river mentioned in the charter of Massachusetts Bay he finally agreed with his colleagues to adhere to the designation in the charter. It is very probable, said Mr. Adams, that the patent of King James to Sir William Alexander, and an act or acts of Parliament might be produced and argued on; but he did not recollect any particular use that was made of them. Nothing ultimately was relied upon that interfered with the charter of Massachusetts Bay. No other map than Mitchell's was before the commissioners when the second article of the treaty was prepared, according to his recollection. Documents from the public offices in England were brought over, and laid before the negotiators, in answer to which the memorials of Governor Shirley and others were produced; also the counter memorials of the French commissioners at Paris in a printed quarto volume; also a report of Mr. Hutchinson to the General Court, printed in a journal of the House of Representatives not many years from 1760, and certain proceedings of Governors Pownal and Bernard recorded also in the journals of the House of Representatives. The ultimate agreement was to adhere to the charter of the Province of Massachusetts Bay and to the river St. Croix mentioned in it, which was supposed to be delineated correctly on Mitchell's map.

At the conclusion of Mr. Sullivan's examination of Mr. Adams, the commissioners, probably at the suggestion of Colonel Barclay, asked the president, "Do you know whether it was understood, intended or agreed, between the British and American commissioners, that the River St. Croix, as marked on Mitchell's map, should so be the boundary as to preclude all inquiry respecting any error or mistake in the said map in designating the River St. Croix? Or was there any, if so what, understanding, intent or agreement between the Commissioners relative to the case, or

error, or mistake, in the said map?" To these inquiries Mr. Adams answered: "The case of such supposed error, or mistake, was not suggested; consequently, there was no understanding, intent or agreement expressed respecting it."¹ These questions of the commissioners, and the answers made to them by Mr. Adams, brought at once into view important considerations. Mr. Sullivan had established the fact that Mitchell's map was the only map used in connection with the treaty negotiations, and that the St. Croix River on that map was supposed to be the river St. Croix of the boundary between the Province of Massachusetts Bay and the Province of Nova Scotia. But a further inquiry was now suggested as pertinent, viz., whether the St. Croix of Mitchell's map might not have been erroneously located? Evidently this inquiry of the commissioners had not been anticipated by Mr. Adams, while his answer could hardly have been anticipated by Mr. Sullivan.

This part of Mr. Adams' testimony was confirmed by Mr. Jay, who in a deposition, subsequently presented, stated that it was agreed by the plenipotentiaries that the river St. Croix, laid down on Mitchell's map, was the river St. Croix forming a part of the boundary between the two countries; "but," he added, "whether that river was then so decidedly and permanently adopted and agreed upon by the parties as conclusively to bind the two nations to that limit, even in case it should afterwards appear that Mitchell had been mistaken, and that the true river St. Croix was a different one from that which is delineated by that name on his map, was a question or case which he does not recollect nor believe was then put or talked of. . . . For his own part he was of the opinion that the easterly boundaries of the United States ought, on principles of right and justice, to be the same with the easterly boundaries of the late colony or province of Massachusetts." When he was asked for any "particular and explicit declarations" that would authorize him to say that the part of the boundary line formed by the St. Croix River was "mutually and clearly con-

¹ *Boundary MSS.*, State Library, First Series, VII, 101-103.

ceived and admitted" to be also a part of the eastern boundary of Massachusetts, Mr. Jay replied that at that distance of time he could not remember. Indeed, he had doubts, he added, if there were at the time of the treaty very clear conceptions with reference to the easterly extent of Massachusetts.¹

In a letter to Judge Parsons, Mr. Sullivan expressed his surprise at the admissions of these important witnesses. "Mr. Adams and Jay testify that they were governed by Mitchell's map, but add (strangely) that the bounds of the charter of Massachusetts were intended; when in fact the charter of 1692 [1691] was bounded on the Gulf and River St. Lawrence. All Nova Scotia was, by the charter of William and Mary, a part of Massachusetts, and separated from it after the treaty of Ryswick, in 1700, or about that time." A fuller disclosure of Mr. Sullivan's surprise is discoverable in his added words, "There have great difficulties resulted from that expression in these testimonies."² Colonel Barclay, as may easily be inferred, was as much elated by Mr. Adams' testimony as Mr. Sullivan had been surprised and depressed.

Franklin, another of the American negotiators of the treaty of 1783, died in Philadelphia, April 17, 1790; but a letter written by him to Jefferson only nine days before his death was laid before the commission, thus completing the testimony of the three plenipotentiaries from the United States. "I can assure you," he wrote, "that I am perfectly clear in the remembrance that the map we used in tracing the boundary was brought to the treaty by the commissioners from England, and that it was the same that was published by Mitchell above twenty years before. Having a copy of that map by me in loose sheets, I send you that

¹ *Annals MSS.*, State Library, First Series, VII, 245-247. The deposition was taken May 21, 1798, before Commissioner Benson as one of the judges of the supreme court of the State of New York, but it was not filed with the commissioners until September 19th following. *Boundary MSS.*, State Library, First Series, I, 146.

² *Annals MSS.*, State Library, First Series, I, 328.

sheet which contains the bay of Passamaquoddy, where you will see that part of the boundary traced. That the map we used was Mitchell's map, Congress was acquainted with at the time by a letter to their secretary for foreign affairs, which I suppose may be found on their files."¹

Early during the meeting of the commission in Boston, Mr. Sullivan filed certain depositions having reference to matters presented in his argument. The most important was the deposition of John Mitchell, who made a survey of the Magaguadavic or St. Croix River in 1764, to which was added the deposition of Israel Jones relative to the survey of the St. Croix.² The British agent filed extracts from Champlain's *Voyages* with plans; affidavits of Charles Morris, deputy surveyor general, and depositions of Alexander Hodges, James Brown, Jeremiah Frost, John Curry and Robert Pagan.³

Evidently until the time of the meeting of the St. Croix commission in Boston, Mr. Sullivan had regarded the American claim as establishing the boundary between the two countries. This claim, now made assailable by the testimony of the negotiators, was also assailed by evidence offered by the British agent to show that the St. Croix Island of the Schoodic River, and visited by the commissioners in 1796, was the St. Croix Island of the de Monts settlement in the winter of 1604-1605; that the Schoodic River was the St. Croix River in which the island is located, both the river and the island being so named by de Monts; and that this river, with its designation thus received, was the St. Croix River of ancient maps and charters.

Such had been the British claim from the beginning of the sessions of the commission; but the works of Champlain, the historian of de Monts' colony, were not then accessible. The best American libraries at that time were scantily supplied, and books

¹ *Boundary MSS.*, State Library, First Series, VII, 239, 240.

² The deposition is in the library of the Maine Historical Society, attached to John Mitchell's diary of his survey in 1764.

³ *Boundary MSS.*, State Library, First Series, I, 95-97.

from the old world could be obtained only after long delays occasioned by the irregular communications of that time. At length, in the summer of 1797, the British agent received from England an ink tracing of Champlain's map of St. Croix Island and the St. Croix River in that part in which the island is located.¹ Colonel Barclay, in a letter to Lord Grenville, dated Annapolis, September 8, 1797, tells how the tracing was secured, and the use that was made of it. "His Grace, the Duke of Portland, having forwarded to Mr. Chipman, his Majesty's Agent, extracts from Champlain and copies of his maps, particularly of the River St. Croix and the island on which the French built and wintered in 1604, and that map having represented the situation and extent of the buildings on the island, Mr. Chipman immediately sent to a gentleman residing near that place a copy of the map and requested him to dig agreeably to the positions laid down."² The gentleman to whom Colonel Barclay referred was Mr. Robert Pagan of St. Andrews. He probably received the tracing about the middle of June. In a letter to Mr. Chipman, dated St. Andrews, June 19, 1797, Mr. Pagan gives an extended account of a visit to St. Croix Island, and of the many points of identification examined by him and his party, the identified locations corresponding with the locations of buildings on Champlain's map.

July 7, 1797, Mr. Pagan again visited St. Croix Island. In a letter to Mr. Chipman on the same day, he reported the discovery of piles of bricks at regular distances from each other, also stones laid one upon another in clay and several tiers deep, all in the exact range described in Champlain's plan of the buildings constructed by de Monts. So striking was the correspondence, he added, "that no person whatever can, after examining them,

¹ This tracing, found with the *Ward Chipman MSS.* that fell into the hands of Mr. Kilby as already mentioned, is in the possession of the Maine Historical Society. Attached to it is this note: "Copied from a *fac simile* (made by a Notary Public in London (attested under the seal of that city) of a map in Champlain's *Voyages*, published at Paris *anno* 1613."

² *Correspondence of Thomas Barclay*, 75, 76.

avoid being convinced beyond the possibility of a doubt that this is St. Croix Island." A subsequent visit to the island with several other persons was reported to Mr. Chipman by Mr. Pagan on July 20th. "In digging for a few minutes near some of the ruins," he wrote, "we turned up with a spade a metal spoon, a musket ball, a spike-nail and a piece of stone-ware, all of which bear evident marks of antiquity." These and other relics, with his own deposition as to these discoveries, and the depositions of the gentlemen who visited the island with him, Mr. Pagan sent to Mr. Chipman. "If the different depositions are not sufficiently satisfactory to the commissioners, I hope they will conclude to meet here and satisfy themselves on the view, when I am confident a shadow of a doubt will not remain in any of their minds of Doceas Island being the St. Croix Island of de Monts."

When Mr. Pagan's letters,² with his deposition and the depositions of the gentlemen who accompanied him in his discoveries were laid before the commissioners, their importance was at once recognized; but it was urged that before their consideration there should also be an examination of other islands indicated in the American claim, and the commissioners ordered that Robert Pagan and Joseph Garnet, named by the British agent, and Phinehas Bruce and John Cooper, named by the American agent, should broaden the investigations already made by "digging upon and examining any islands in or near Passamaquoddy Bay."³ With this action at the close of its session in Boston, the commission, August 16th, adjourned to meet in Providence, R. I., on the first Monday in June, 1798.

Evidently the action of the commissioners, in the appointment of Messrs. Pagan, Garnet, Bruce and Cooper to broaden the inves-

¹ A common designation for St. Croix Island at that time. Later it appeared as Docias, Dochez, Doucetts and Dochet. *Transactions of the Royal Society of Canada*, Second Series, 1902-1903, VIII, 142.

² The Pagan letters are among the *Ward Chipman MSS.*, library of the Maine Historical Society.

³ *Boundary MSS.*, State Library, First Series, I, 107, 108.

tigations made at St. Croix Island, led to no results. In fact, as early as the beginning of 1798, Colonel Barclay regarded the evidence for the British case as established so far as to leave the Magaguadavic River out of further consideration as the intended St. Croix of the treaty. In a letter to Mr. Chipman, January 9th, concerning his future management of the British case, Colonel Barclay said that in his opinion the question that remained was whether the Schoodic, in its western branch, or the Chiputneticook, in its northern branch, was to be followed. "If the line is to be run from the source of the Chiputneticook," he wrote, "his Majesty will lose a large part of the Province of New Brunswick, which could never have been intended. If you can once establish the general idea of our government, that will be *prima facie* evidence, and must prevail unless on the part of the Americans they can show an opposite opinion."¹

Meanwhile Mr. Sullivan was preparing his supplementary argument in reply to that of the British agent. But early in the year, he saw the impossibility of securing not only the books, etc., bearing upon questions that had been raised by Mr. Chipman, but the river surveys which were far from completion, and he suggested a postponement of the meeting of the commission in Providence until the surveys were made. The British commissioner and agent gave their consent to the proposed postponement, as also did the American commissioners after correspondence with the British commissioner; and the meeting of the commission in Providence was postponed from the first Monday in June, 1798, to August 15th following.² At the meeting in Providence the commissioners heard the additional arguments of the agents of the two countries. Mr. Sullivan's argument forms a manuscript volume of five hundred and thirty-four pages. In it he contended that the discoveries made by Mr. Pagan failed to furnish conclusive evidence that Dochet Island, on which these discoveries were made, was the island on which de Monts established his colony in

¹ *Ward Chipman MSS.*, library of the Maine Historical Society.

² *Boundary MSS.*, State Library, First Series, VII, 111, 112.

1604, insisting that the history of the enterprise, and the circumstances attending de Monts' occupation of the island where he wintered, were against any such claim.¹

The British agent, however, having established, as he believed, his contention that Dochet Island was the island on which de Monts located his colony and which he named St. Croix, now bent all his energies to establish his added contention that the Schoodic River was the river to which the name St. Croix was originally given by de Monts, and which became the western boundary of Nova Scotia, claiming that the line of the treaty followed its western branch toward the Penobscot, thus giving to Great Britain a larger extent of territory than if the line was made to follow the northern, or Chiputneticook branch of the Schoodic.

About this time Mr. Sullivan became apprehensive that one of the American commissioners, Mr. Benson, would allow his opponent's claim, and give to Great Britain the country as far as the Penobscot. In a letter dated September 29, 1798, he wrote to Mr. Pickering, secretary of state for the United States, as follows concerning Mr. Benson's attitude: "He seems to be impressed with an idea that it is of no consequence to the United States how this line is settled. I wonder at his embracing this opinion, because there is on the table a file of papers, frequently referred to, consisting of the zealous proceedings of Massachusetts, from the treaty of peace to the treaty of amity, in order to remove the English people from St. Andrews. Judge Howell and myself are clearly of the opinion that the Magaguadavic is the river truly intended; and that on a fair construction of all the evidence that river ought now to be fixed as the boundary." But there were difficulties of a public nature in the country that induced him to add: "I should not be uneasy at a *unanimous* result that the Scoodiac is the St. Croix intended, and that the lake from which the north branch issues is the source. The quantity of land between the Magaguadavic and the Schoodiac north branch is

¹ *Boundary MSS.*, State Library, First Series, V, 213-255.

about two million of acres, and has been granted by the English government. The lakes from which the Magaguadavic and the Cheputneticut issue respectively are but nine miles apart. The strip of land between lines drawn due north from these sources to the highlands is not considerable; but the territory between a north line from the Schoodiac lake, near Penobscot river, is very great; and three million of acres have been granted by Massachusetts.''

The apprehensions of the American agent with reference to Mr. Benson, however, were happily dissipated.¹ Mr. Benson evidently thought it was of little consequence how the line was settled. Later in the controversy, Maine had good reason to complain of the manifestation of a spirit of indifference on the part of the nation as a whole with reference to the boundary line. But neither records nor maps had represented the western boundary of Nova Scotia as approaching the Penobscot, and it may be that Mr. Sullivan and Judge Howell now brought the Magaguadavic again into view so as to give an acceptance of the northern branch of the Schoodic the appearance of a compromise in the settlement.

Certainly, considerations with reference to the importance of securing the acceptance of such a line as a compromise were those that not long after brought Mr. Liston, the British minister, to Providence, where he had an early interview with both the British commissioner and the British agent. A letter from Mr. Chipman to Mr. Liston, dated October 23, 1798, marked "private," and also a letter of the same date from Mr. Liston to Mr. Chip-

¹Mr. Benson prepared a report stating the reasons that induced the commissioners to decide that the Schoodic River was the St. Croix River of the treaty of 1783, and a copy of this report he presented to President Washington. A revised copy of the report was subsequently presented by Mr. Benson to the Massachusetts Historical Society, in whose proceedings (Third Series, Vol. III, 349-368) the report was printed, with added remarks by Justin Winsor. Among the Barclay manuscripts presented to the Maine Historical Society by Mr. George L. Rives, on the completion of the *Correspondence of Thomas Barclay*, there is a duplicate original copy of this report, and a reprint of Mr. Benson's report from this copy will be found in Moore's *International Arbitrations*, I, 33-43.

man, were doubtless written in order to secure an official record of the situation. According to the first of these letters, Mr. Chipman had been informed that the commissioners had decided to consider the Schoodic to be the river St. Croix truly intended under that name in the treaty of 1783. Differences, however, had arisen concerning the source of the river. Colonel Barclay, who had contended that this source was to be found in the most remote western spring of a chain of lakes far toward the Penobscot, had now come to the position of Mr. Benson, who insisted that a chain of lakes could not be called a river, and found the source of the Schoodic in lake Genesagarumsis; while Mr. Howell maintained that the source of the river was in the first lake which the Chiputneticook (the north branch of the Schoodic) entered. In the positions taken by Colonel Barclay and Mr. Benson, Mr. Chipman said he found consequences inconvenient if not injurious to the interests of New Brunswick, as it would leave the military posts at Presque Isle and Grand Falls, and every part of the river St. John above Presque Isle, within the territory of the United States. At the same time, however, it would leave within the limits of British territory a large tract of country that had been granted to settlers by Massachusetts.

This last consideration was a matter of such great importance in the opinion of Mr. Sullivan that he went to Mr. Chipman with the proposal of an agreement, on the part of the American and British agents, to recommend "an accommodation between the two governments" by making the northernmost source of the Chiputneticook the source of the Schoodic, now to be known as the St. Croix, in lieu of the source agreed upon by Colonel Barclay and Mr. Benson. In this proposal Mr. Chipman found hope for an unanimous agreement upon the part of the commissioners; and in his letter to Mr. Liston he said he would not hesitate to accede to it in the endeavor to effect a decision, as such an undertaking was within his duty or power as the British agent. He therefore laid the matter before the British minister, probably with the knowledge and approval of the British commissioner. In his reply Mr.

Liston consented to the proposal of Mr. Sullivan, and promised to take the earliest opportunity of expressing to Lord Grenville his satisfaction with the result in justification of the action of the British agent and the British commissioner.¹

Mr. Howell stated his position in a letter to Mr. Pickering, the United States secretary of state, saying that before the arguments were closed he had fixed upon the northern branch of the Schoodic as the boundary line, and added: "Both the other commissioners, I soon found, were as much fixed on the western branch. Many days were occupied by us in consideration and discussion of the subject. At length I was mortified to find myself alone, and that the other two had prepared a final declaration in favor of the western branch, which they showed to me and said they were ready to sign. To this I gave a decided negative. I committed to writing my reasons of dissent, and put the argument into their hands for deliberate perusal. After perusal, they returned it to me. I told them it was my request that it would be lodged on file with our secretary and made part of our proceedings. This they utterly refused. I then told them that I would think it my duty to transmit it to the secretary of state, to be lodged in his office with the papers in the case. To this they could have no objection. Some altercation, rather unpleasant, took place between my friend Benson and myself in private. Colonel Barclay seemed to keep himself on the reserve, and to push our friend Benson forward. I had labored from the first of our discussions to prove that the source of either branch must be where it lodges itself in waters of a different denomination. In this opinion we all seemed at length to agree, they for the issuing of the waters of the western branch out of the Lake Genegenasarumsis (if I spell it right), and I for the issuing of the waters of the north branch out of the *first lake*. While things were in this posture, something like a negotiation, started by Judge Sullivan, and, I believe, assented to by Mr. Liston, who was then in Providence on his

¹ *Correspondence of Thomas Barclay*, 87-90. The originals of both of these letters are in the Barclay collection, Maine Historical Society.

way westward, carried them to the north branch, and induced me to agree with them in our final result; to induce me to which Judge Sullivan read to me your letters to him, in which you contended that the source of a river must be at the most remote waters which flow into it.

"It must be allowed that there is room for debate and for a diversity of opinion on this question, whether the source of the north branch is at the first lake, or where we have fixed it; and this, being a matter of judgment, was a subject of accommodation. I considered it as a fortunate circumstance that all the claims of individuals are quieted; and the satisfaction expressed by both agents gave reason to hope that the parties more immediately interested would readily acquiesce in our result."¹

All differences having now been harmonized, the declaration of the commissioners was made October 25, 1798. It follows in full:²

We, the said commissioners, having been sworn "impartially to examine and decide the said question, according to such evidence as should respectively be laid before us, on the part of the British government and of the United States," and having heard the evidence which hath been laid before us by the agent of his Majesty and the agent of the United States, respectively appointed and authorized to manage the business on behalf of the respective governments, have decided, and hereby do decide, the river, here-

¹Amory's *Life of James Sullivan*, I, 331, 332. Colonel Barclay, in a letter to Lord Grenville giving an extended account of the way in which the final decision was reached, wrote: "After much debate between Mr. Benson and myself as to the source of the river, his Majesty's agent, with the advice of Mr. Liston, the envoy extraordinary, requested me to accede to the Chiputneticook provided I could obtain the northwest source of that river. To this point Mr. Benson, as a matter of negotiation and accommodation between the nations, readily assented. Mr. Howell declined being a party to the declaration, until it was engrossed and ready for execution. He then reluctantly directed his name to be inserted in the declaration, which he eventually signed." *Correspondence of Thomas Barclay*, 92, 93.

²The Declaration is in *American State Papers*, VI, 921. It is here given as found in *Boundary MSS.*, State Library, First Series, I, 164-167. Moore, *International Arbitrations*, I, 29-31, follows the manuscript copy in the State Department, Washington, in which Chiputneticook appears as Chiputneticook and Chibnitcook as Chibuitcook, the copyists failing to add the words "if I spell it right," as did Mr. Howell after wrestling with Genegenasarumsis.

inafter particularly described and mentioned, to be the river truly intended under the name of the River Saint Croix, in the said treaty of Peace, and forming a part of the boundary therein described; that is to say, the mouth of the said river is in Passamaquoddy Bay, at a point of land called Joe's Point, about one mile northward from the northern part of Saint Andrew's Island, and in the latitude of forty-five degrees, five minutes and five seconds north, and in the longitude of sixty-seven degrees, twelve minutes and thirty seconds west from the Royal Observatory at Greenwich, in Great Britain, and three degrees, fifty-four minutes and fifteen seconds east from Harvard College, in the University of Cambridge, in the State of Massachusetts, and the course of the said river, up from its said mouth, is northerly to a point of land called the Devil's Head, then, turning the said point, is westerly to where it divides into two streams, the one coming from the westward, and the other coming from the northward, having the Indian name of Chiputnatecook or Chibuitcook, as the same may be variously spelt, then up the said stream, so coming from the northward to its source, which is at a stake near a yellow birch tree, hooped with iron and marked S. T. and J. H. 1797, by Samuel Titcomb and John Harris, the surveyors employed to survey the above mentioned stream, coming from the northward. And the said river is designated on the map hereunto annexed, and hereby referred to as farther descriptive of it, by the letters A B C D E F G H I K and L, the letter A being at its said mouth, and the letter L being at its said source; and the course and distance of the said source from the island at the confluence of the above-mentioned two streams, is, as laid down on the said map, north five degrees and about fifteen minutes west, by the magnet about forty-eight miles and one-quarter.

In testimony whereof, we have hereunto set our hands and seals, at Providence, in the State of Rhode Island, the twenty-fifth day of October, in the year one thousand, seven hundred and ninety-eight.

[L. S.] THOMAS BARCLAY,

[L. S.] DAVID HOWELL,

[L. S.] EGBERT BENSON.

Witness, ED. WINSLOW,

Secretary to the Commissioners.

By the people of the United States in general the declaration of the commissioners was cordially approved. President Adams, in his second annual message, which was laid before Congress December 8, 1798, said: "This decision, it is understood, will preclude all contention among individual claimants, as it seems that the Scudiac and its northern branch bound the grants of land which have been made by the respective adjoining governments."¹ But

¹*Messages and Papers of the Presidents*, I, 274.

in the District of Maine, especially in the eastern part of the district among the settlers who had ardently espoused the American claim, the decision was the occasion of great disappointment in that it failed to carry the boundary as far to the eastward as the terms of the treaty were believed to carry it. Moreover, it was not easy for them to obtain the reasons for this action on the part of the commissioners. Newspapers were few, and these paid only scant, if indeed any, attention to matters that properly might have been regarded as possessing great public interest. The only information they received for some time was contained in the declaration announcing the decision that made the Schoodic, not the Magaguadavic, the St. Croix of the treaty of 1783; and this was not pleasing information in that it confirmed to the Loyalists, who had settled at St. Andrews and were still known by them as Tories, the location from which they had been warned.

The disappointment lingered long. Ex-Governor Israel Washburn gave expression to it as late as May 15, 1879, in an extended paper on *The Northeastern Boundary* read before the Maine Historical Society, and subsequently printed by the society. The Magaguadavic, he said, should have been made the boundary and not the Schoodic; and he adds: "But our bad fortune did not stop here. The commissioners, having agreed upon the river, decided that its source was in what is now known as Round Lake, the same, I suppose, that is laid down as North Lake on Greenleaf's map of 1815; but when they came to make their report, for reasons which I have never been able to learn, they substituted Chiputneticook for Round Lake, and thereby gave to New Brunswick a tract of country of the average breadth of ten miles, and one hundred and fifty miles long; and more by so much than was actually required even upon the hypothesis that the Schoodic was the true St. Croix. . . . The British appear to have had their own way before the commissioners. When they asked for Round Lake, they received it; and when they wanted Chiputneticook they had no difficulty in getting it." ¹

¹*Maine Historical Society Coll.*, Second Series, VIII, 15, 107.

Another ex-governor of Maine, General Joshua L. Chamberlain, writing twenty-five years later than ex-Governor Washburn, found new sources of information open to him, and in an address June 25, 1904, at St. Croix Island, on the three hundredth anniversary of the landing upon that island of de Monts and his fellow colonists, he affirmed the justice of the declaration of the St. Croix commission. "One singular dignity," he said, "this island settlement of de Monts has come to hold. After long lost identity and earnest searching these ruins were discovered and admitted to be the proper mark for the boundary line between two great nations, England and the United States of America. Such value had this broken enterprise in the minds of men and councils of nations. Without the identifying of this spot the language of treaties was in vain, and bounds of nationalities in confusion."¹

But the Loyalists of St. Andrews had their disappointments, as well as the people in the District of Maine. One was occasioned by the failure of their earlier expectations that the close of the Revolutionary War would leave them in possession of the homes they had made for themselves at Penobscot under British protection. Now, they had an added disappointment in the failure of their later contention that the Schoodic, in its western branch, was the St. Croix River of the treaty of 1783, the commission declaring for the northern branch known as the Chiputneticook. In this, these disappointed Loyalists had the sympathy of the people in the provinces, and of early British writers, who insisted that the boundary should have followed the western branch of the Schoodic, as early American writers insisted that the Magaguadavic should have been made the boundary. Careful investigators in recent years, however, having the advantage of looking at the boundary controversy in the retrospect, and especially with reference to new and valuable sources of information only recently brought to light, find as much satisfaction in the award of the St. Croix commission as Governor Chamberlain and other recent American writers. Especially should mention be made of the

¹*Maine Historical Society Coll.*, Third Series, II, 106.

Contributions to this discussion by Professor William F. Ganong, of Smith College, Massachusetts. A native of New Brunswick, he is not only familiar with the northeastern boundary territory, but he has given much attention to the boundary controversy. In the *Transactions of the Royal Society of Canada*,¹ in a very scholarly and impartial consideration of this controversy, he has presented clearly and forcefully the results that his studies have reached. In summing up the facts with reference to the true St. Croix as determined by the St. Croix commission, he says: "The Chiputneticook is without question the main river, and the one most natural to be selected as a boundary of the kind desired in this region. I believe, therefore, that the British agent was not justified upon historical or topographical grounds in claiming the western branch, though he supposed he was, and, from the point of view of the advocate, he was. That the Chiputneticook was chosen, even though as a compromise and not upon logical grounds (that is, as it were, by luck), seems to me most fortunate, and both nations should agree that this question at least was settled happily."²

¹ Second Series, Vol. VII, Section II, 1901-1902. The paper is entitled *A Monograph of the Evolution of the Boundaries of the Province of New Brunswick*.

² *Ib.*, 261. Of great interest is Prof. Ganong's cartographical study (pp. 265-267), showing that the river St. Croix of Mitchell's map is the present river of that name and not the Magaguadavic.

CHAPTER IV.

THE BOUNDARY IN PASSAMAQUODDY BAY.

THE declaration of the St. Croix commission had reference only to the true St. Croix River, including its mouth and source. But in Passamaquoddy Bay, into which the St. Croix River empties, there are islands as to whose nationality important differences early developed, which were as irritating and embittering in the boundary territory as were those that had reference to the river St. Croix. In an allusion to these differences President Adams, announcing¹ the settlement of the St. Croix controversy, said: "A subordinate question, however, it has been suggested, still remains to be determined. Between the mouth of the St. Croix, as now settled, and what is usually called the Bay of Fundy, lie a number of valuable islands. The commissioners have not continued the boundary line through any channel of these islands, and unless the Bay of Passamaquoddy be a part of the Bay of Fundy, this further adjustment of boundary will be necessary. But it is apprehended that this will not be a matter of any difficulty." That the apprehension was without adequate support, the history of the boundary controversy shows.

The second article of the treaty of 1783 made the boundaries of the United States to comprehend "all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east" from the middle of the mouth of the river St. Croix "in the Bay of Fundy," and from the middle of the mouth of the river St. Mary's in the Atlantic Ocean, "excepting such islands as now are, or heretofore have been,

¹ Annual Message, December 8, 1798, *Messages and Papers of the Presidents*, I, 274.

within the limits of the said province of Nova Scotia."¹ Why the St. Croix commissioners made no attempt to settle the controversy with reference to the Passamaquoddy islands is explained by Judge Sullivan, the American agent, under the provisions of the St. Croix commission: "The agent of the United States urged the commissioners to settle the boundary through that bay to the sea; because the treaty expressly recognized the mouth of the river as in the Bay of Fundy, which is a limb of the ocean, and the other bay united with it might be considered as the river's mouth; but they declined it on an idea that their commission extended no further than to an authority to find the mouth and source of the river, and that, let whichever would be the river, it had its mouth three leagues from the sea, in Passamaquoddy Bay; they, therefore, limited their decision, on its southerly line, to a point between St. Andrews and the shore of the United States."²

Judge Benson, in his report to the president of the United States, suggested a boundary line with reference to the Passamaquoddy islands which he described in these words: "Beginning in the middle of the channel of the River St. Croix, at its mouth; thence to the middle of the channel between Point Pleasant and Deer Island; thence through the middle of the channel between Deer Island on the east and north, and Moose Island and Campo Bello Island on the west and south, and round the easterly point of Campo Bello Island to the Bay of Fundy." Because of continued complaints concerning British assertion of jurisdiction over the Passamaquoddy islands, this suggestion, made by Judge Benson, was taken up by Mr. Madison, secretary of state for the United States, who in a letter, July 28, 1801, to Rufus King,³

¹ Moore, *History and Digest of International Arbitrations*, 45. *Farnham Papers*, I, 76.

² *American State Papers*, II, 586.

³ Born in Scarborough, Maine, in 1755, Rufus King in 1788 removed to New York, which became his permanent residence. In 1789, he was elected the first United States senator from that state and was re-elected in 1795. Not long after, having declined the office of secretary of state, he was nominated by Washington as minister plenipotentiary to Great Britain, and in

minister of the United States to Great Britain, called attention to the fact that the St. Croix commissioners left undetermined the nationality of the Passamaquoddy islands. It appears, he said, to have been the intention of the two nations, in the peace adjustments of the treaty of 1783, to make navigable waters where they were common to both the divisional line, the boundary running through the middle of their channels. Hence if one of the passages from the mouth of the St. Croix River into the Bay of Fundy be seldom and imperfectly navigable, and the other constantly and completely so, this last should be the boundary. On the other hand, a literal construction of the treaty, "as far as practicable," would exclude Great Britain from both passages; and expressing the belief that a boundary satisfactory to both nations could be established, he made use of Judge Benson's suggestion in almost his identical words, adding: "These ideas are thrown out only for consideration. I shall probably have it in my power shortly to transmit you a commission to settle this point, with definite instructions. Meanwhile, you may break the business to the British ministry, but without implicating any fixed mode of settlement."¹

June 8, 1802, Mr. Madison sent to Mr. King a commission, conferring upon him powers for the adjustment, by proper stipulations, of such matters pertaining to the boundary between Great Britain and the United States as remained to be decided. For information with reference to Passamaquoddy Bay contentions he was referred to observations made by the secretary of state in his letter of July 28, 1801. His attention also was called to an inclosed letter from Judge Sullivan to the secretary, mention of which has already been made. In this last letter there was a ref-

July, 1796, he sailed with his family for England. After his return to this country in 1804, he was again elected United States senator from New York, his fourth term expiring in 1825. Not long after, he was persuaded again to accept the embassy to England; but failing health compelled him at length to relinquish his office, and returning to this country, he died at his home in Jamaica, Long Island, April 29, 1827.

¹*American State Papers*, II, 585.

erence to the language of the treaty of 1783, which included in the boundaries of the United States "all islands within twenty leagues of every part of the shores of the United States excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia." Concerning this exception, Judge Sullivan in his letter remarked:

"The ancient charter of Nova Scotia to Sir William Alexander, in 1638, included all the country from the Kennebec to the Bay of Chaleur. The treaty cannot mean, by the expression 'heretofore within Nova Scotia,' all the islands in that charter. If it mean the islands which were within a more recent description of it, where the boundary westward was the St. Croix, excluding the territory of Acadia, which was placed under the jurisdiction of Massachusetts by the charter of that province in 1692 and bounded on that river, the river Schodiac being now the established St. Croix, there can be no question in regard to Massachusetts extending to the channel where it joins that river. But Moose Island lies two leagues below what the Commissioners made the mouth of the St. Croix, and very near the American shore. This was never granted by the crown of England, or by the government of Nova Scotia, before the treaty of peace; nor was there ever any occupancy of it by subjects acknowledging the authority of Nova Scotia; nor did that province ever attempt to exercise authority there. Long before the Revolutionary War it was in the occupancy of people of, and from, the late province of Massachusetts Bay."¹

The British representative in this convention for the settlement of the differences between the two countries with reference to the boundary was Lord Hawkesbury, the principal secretary of state for foreign affairs. February 28, 1803, Mr. King, in a letter to Mr. Madison, reporting progress with reference to the Passamaquoddy line, made mention of an interview with Colonel Barclay, one of the St. Croix commissioners, then on a visit to England, probably in the interest of boundary matters, who thought it

¹*American State Papers*, II, 586.

would be improper to cede Campo Bello to the United States, unless such action should be desired by its inhabitants. No objection had been made to the American claim of Moose Island. Attention had been paid to the line from the northwest corner of Nova Scotia and the head of the Connecticut River. Measures also were to be taken for ascertaining and determining the northwest point of the Lake of the Woods and the source of the Mississippi River; and Mr. King could see no difficulty in the way of a speedy agreement except that of getting Lord Hawkesbury "to bestow upon the subject time to understand it." Lord Hawkesbury's attention seems to have been secured, and convention articles were signed May 12, 1803.¹ The first article, the one referring to the Passamaquoddy islands, was as follows:

"The line hereinafter described shall and hereby is declared to be the boundary between the mouth of the River St. Croix and the Bay of Fundy; that is to say: a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the commissioners appointed for that purpose; thence through the middle of the channel between Deer Island on the east and north, and Moose Island, and Campo Bello Island on the west and south, and round the eastern point of Campo Bello Island to the Bay of Fundy; and the islands and waters northward and eastward of the said boundary, together with the islands of Campo Bello, situated to the southward thereof, are hereby declared to be within the jurisdiction and part of his Majesty's province of New Brunswick; and the islands and waters southward and westward of the said boundary, except only the island of Campo Bello, are hereby declared to be within the jurisdiction and part of Massachusetts, one of the said United States."²

This, it will be seen, is the boundary line for Passamaquoddy Bay suggested by Judge Benson, rather than that suggested by Colonel Barclay—a line evidently determined by the provisions of the treaty of 1783, which expressly gave to Great

¹ Colonel Barclay, in London in 1802 and 1803, suggested to Lord Hawkesbury that in his opinion Moose Island should be granted to the British, as that government had possessed it since 1783; and in 1804 his suggestion he conferred with Mr. King, who finally decided in favor of Moose Island in full for all claims for islands in Passamaquoddy Bay. *Annals of Thomas Barclay*, 280, 281.

² *American State Papers*, II, 584.

islands that then were, or had been, within the jurisdiction of Nova Scotia. Campo Bello, which geographically should belong to the United States, was granted by Nova Scotia to William Owen in 1767, and, by a law of that province, courts of justice were established there in 1770.¹ It was accordingly included in British territory, as also was Deer Island, granted in 1767; while Moose, Dudley and Frederick Islands, in close proximity to Massachusetts territory, were regarded as within the territory of the United States. This action was laid before the Senate of the United States October 24, 1803. To it the Senate, February 9, 1804, gave its assent on condition that the fifth article of the convention, relating to the northwest point of the Lake of the Woods and the source of the Mississippi River, should be expunged. The British government not acceding to this condition, the ratifications of the respective governments were not exchanged and the convention failed.²

Another attempt to arrange the boundary line in Passamaquoddy Bay was made in 1807. In these negotiations, Mr. Monroe, the American minister to England, had the assistance of Mr. William Pinkney, of Maryland, who was in England at the

time as a special envoy with reference to the settlement of international differences. These were mentioned in a communication addressed to Mr. Pinkney by Mr. Madison, April 25, 1807. "The first object of our present mission is defining the connecting line between the north of the Bay (as heretofore settled by commission) and the Bay of Fundy. This was copied from the convention of 1763 and 1764, and adopted by Mr. Pinkney and Mr. Murray, and, adopting the same, Mr. Pinkney, in 1807, proposed to Mr. Monroe that Campo Bello Island, first mentioned in the convention of 1763, should be excepted from the British territory. The British commission, however, did not establish its object by an agreement, and the result of the mission was to furnish occasion for an article in the *Transactions of the* Ganong, *Transactions of the*

exception of almost equal importance with the whole residue of the subject. Moreover, the navigation of the east passage being secured to the United States by a precise provision, the whole effect of the first article of the convention of 1803 would be produced at once by running the line along the middle of the west passage. Accordingly, the commissioners proposed an article framed upon that principle. "We do not perceive," they said "that in substance this article is different from the other, while it is more simple and intelligible in its plan. Even if the commencement of one of the parallel east lines, within which, by the treaty of peace, the United States are entitled to all islands within twenty leagues of any part of our shores (not within the limits of Nova Scotia) should be admitted to depend upon the channel through which our line from the St. Croix is conducted to the Bay of Fundy, it would probably be indifferent to the United States, whether the east or west channel were adopted. Grand Manan seems to be considerably southward of an east line drawn even from West Quoddy Head, and we know of no other island, taking into consideration the exception in the treaty of peace, to the title of which the commencement of that line can now be important."¹

The efforts of Messrs. Monroe and Pinkney proved unavailing on account of the failure of other negotiations, in which the attempt to establish the boundary was only a part. Unhappily, too, the relations between the two countries were now becoming more and more strained because of Great Britain's attitude with reference to neutrals. In the Barclay correspondence there is a letter marked "private," written by Judge Benson October 28, 1808, to Colonel Thomas Barclay, which refers to a confidential conversation between the two in New York a few days before, in which the subject of the conversation was a purpose on the part of the British government to take possession of Moose Island. Because of his intimate private relations with Mr. Benson, Colonel Barclay, in this interview, sought to obtain the judge's opinion with reference to such a movement. In this he succeeded, the

¹*American State Papers*, III, 162.

judge asserting his unqualified conviction that the British government could never justify an attempt to take possession of Moose Island either on the ground of better title, or as not within the boundary of any of the grants under which territory there had been claimed, and so was vacant; "for in the latter case the American government would be entitled to it by right of prior occupancy, the fact I presume being, that from the beginning, and certainly since the decision of the commissioners in 1798, actual jurisdiction has been exercised over the island as appertaining to Massachusetts."¹

Apparently Colonel Barclay informed Judge Benson concerning the use he purposed to make of this expression of his opinion, for Mr. Benson closed his letter with these words: "You may communicate this letter as you may think proper, trusting that my motives to it will not be misconstrued." The information thus received was at once transmitted to the British minister in Washington, from whom Colonel Barclay, as British consul general in New York, had received confidential communications because of the refusal of the government of the United States to relinquish its possession of Moose Island. In this letter, after an admission that he had been "led into an error" by giving the treaty of 1783 too narrow a construction, and without any mention of his interview with Judge Benson, Colonel Barclay wrote: "It appears to me that his Majesty cannot justify taking possession of Moose Island," and he repeated the argument that Judge Benson had used in his letter, adding: "I have in a former letter to you observed that I did not think Moose Island worth five hundred guineas to an individual. I consider it of no consequence to his Majesty for fortifications. Campo Bello, an adjacent and much larger island, is better adapted either for defense or annoyance."²

Evidently, in accordance with the suggestion of Colonel Barclay, Great Britain's purpose to take possession of Moose Island (known

¹ *Correspondence of Thomas Barclay*, 285.

² *Ib.*, 286-288.

as Eastport after incorporation February 24, 1798) was held in abeyance until near the close of the war of 1812. Early in that war, by order of Governor Strong of Massachusetts, a fort at Eastport, known as Fort Sullivan, was occupied by two companies of militia of the district, one under the command of Captain Joshua Chamberlain, of Orrington (grandfather of Major General Joshua L. Chamberlain), and the other under the command of Captain Thomas George, of Brewer. Later, United States troops were brought to Eastport and added to the militia force. July 11, 1814, a large British fleet moved in toward the town by the eastern passage, landed a large military force and compelled the surrender of the fort and town, the commanding officer of the expedition stating that the object of the British government was to "obtain possession of the islands in Passamaquoddy Bay." It was soon discovered, however, that this movement was only a part of a larger movement for the re-occupation of the country between the St. Croix and Penobscot Rivers, in accordance with which, September 1st, a more formidable British naval and military force took possession of Castine and ravaged the country as far north as Bangor, Sir John Sherbrooke, in command of the force, assuring the people in the Penobscot country that if they surrendered their arms and dwelt peacefully they would have protection. On September 20th, having returned to Halifax, Sir John issued a proclamation for establishing a provincial government over the country between the St. Croix and the Penobscot Rivers, including all the islands on the coast, and Major General Gosselin, at Castine, was made governor of the new province.

A clearer insight into this movement, which took place while peace negotiations¹ were in progress at Ghent, is afforded by a

¹As early as May 29, 1813, President Madison nominated Albert Gallatin, John Quincy Adams and James A. Bayard as envoys extraordinary and ministers plenipotentiary to negotiate and sign a treaty of peace and commerce with Great Britain under the mediation of the emperor of Russia (*Papers and Messages of the Presidents*, X, 46), and the nomination was confirmed. The British negotiators were Lord Gambier, Henry Goulburn and Williams Adams.

letter addressed by the Duke of Wellington to the British ministry November 9, 1814. The duke was then in Paris as the British ambassador, wearing the honors of his recent victories in Spain. Matters on this side of the sea were not as satisfactory as the British ministry desired, and having sent some of the duke's favorite troops to this country they now proposed that he should follow them and take command of the British forces in the United States. In this letter to the ministry, stating his objections to this proposal, the duke exhibited a clear understanding of the ministry's designs in connection with this movement under Sir John Sherbrooke, and he expressed his views concerning it in very plain words. "I confess," he wrote, "that I think you have no right from the state of the war to demand any concession of territory from America." Reminding the ministers that they had not been able to carry the war into United States territory and had not even cleared their own territory of the enemy on the point of attack, he added, "You cannot, then, on any principle of equality in negotiation claim a cession of territory, excepting in exchange for other advantages which you have in your power. I put out of the question the possession taken by Sir John Sherbrooke between the Penobscot and Passamaquoddy Bay. It is evidently only temporary, and till a larger force will drive away the few companies he has left there; and an officer might as well claim the sovereignty of the ground on which his piquets stand, or over which his patrols pass. Then, if this reasoning be true, why stipulate for the *uti possidetis*? You can get no territory; indeed the state of your military operations, however creditable, does not entitle you to demand any; and you only afford the Americans a popular and creditable ground which, I believe, their government are looking for; not to break off the negotiations, but to avoid to make peace. If you had territory, as I hope you soon will have New Orleans, I should prefer to insist upon the cession of that province as a separate article than upon the *uti possidetis* as a

principle of negotiation."¹ The ministry accepted the straight soldier-like advice thus proffered, and during the peace negotiations at Ghent all thought of added conversation about the cession of territory in favor of Great Britain, as a result of the war, seem to have been abandoned.

Although the treaty of peace concluded by the two countries at Ghent followed, December 24, 1814, and Castine was evacuated by the British April 25, 1815, Eastport remained under the control of Great Britain until June 30, 1818, it being stated in the treaty that islands in Passamaquoddy Bay and Grand Manan, claimed by both nations, should remain in the possession of the party holding them at the time of the ratifications of the treaty. The provision in the treaty for a settlement with reference to the Passamaquoddy islands and Grand Manan stipulated that the claims thereto should be referred to two commissioners, one to be appointed by the king of Great Britain and one by the president of the United States, with the consent of the Senate. If the two commissioners should agree in their decision, both parties were to consider such decision as final, their report or reports were to be referred "to some friendly sovereign or state to be then named for that purpose and his Britannic Majesty and the Government of the United States engage to consider the decision of such friendly sovereign or State to be final and conclusive on all the matters so referred."²

Under this article, the British government, September 4, 1815, appointed as its commissioner, Thomas Barclay, who had served in the same position in the settlement of the controversy with reference to the St. Croix River. On the part of the United States, President Madison, January 16, 1816, appointed John Holmes, of

¹Lodge, *One Hundred Years of Peace*, 27-31. The much desired military successes did not follow. Wellington's favorite troops, that had been sent to the United States in the preceding summer, were badly beaten at New Orleans by General Jackson, and the place was not captured.

²Moore, *International Arbitrations*, I, 47, 48. The treaty was ratified by the Senate of the United States, February 17, 1815.



JOHN HOLMES.

Alfred, the seat of York County, Maine, then a part of Massachusetts.¹

In sending to Colonel Barclay his commission, Lord Castle-reagh, in a letter dated Foreign Office, September 4, 1815, called attention to the two distinct questions at issue for the consideration of the representatives of Great Britain and the United States, as presented in the fourth and fifth articles of the treaty of Ghent. With regard to the first question, whether the islands in the Bay of Passamaquoddy and in the Bay of Fundy belong of right to the United States or to Great Britain, Colonel Barclay was instructed to keep in mind that his Majesty's right to those islands is supposed to be founded on the second article of the treaty of 1783, which excepted "such islands as now are or heretofore have been within the limits of Nova Scotia." That the islands in question come within the limits of that province would be proved not only from the jurisdiction which the government of Nova Scotia was in the habit of exercising over the inhabitants down to 1783, but especially from the fact that the original grant of the province by King James to Sir William Alexander in 1621 included within the seacoasts mentioned all islands lying near or within six leagues of any part of said coasts; and he added that Colonel Barclay, referring to the proceedings of the St. Croix commission on which he had served as a commissioner, would see that the point now at issue between the two countries was "in some degree decided then" from the fact that the objection made to that decision by the American agent was that it gave to Great Britain the possession of the very islands now under dispute, he on that ground

¹Mr. Holmes was born in Kingston, Mass., in March, 1773. After graduating at Brown University in 1796, he studied law, and having been admitted to the bar in 1799, he entered upon the practice of his profession at Alfred, in the District of Maine. He was a member of the General Court of Massachusetts in 1812, and in 1813 he was elected a member of the Senate, serving until 1817. Then he was elected a member of Congress, serving until Maine became a state in 1820. He was one of the most prominent members of the Maine Constitutional Convention in 1819, and was a member of the United States Senate from Maine, 1820-1827, 1829-1833; also a member of the Maine

arguing, "though ineffectually, the impropriety of the decision itself."¹

For some reason not mentioned, Colonel Barclay did not receive Lord Castlereagh's communication, and the inclosed commission until August 7, 1816. Three days later, in his acknowledgment of the correctness of the above statement with reference to the Passamaquoddy islands and the principles on which his Majesty's claims to those islands were founded, he added: "I am apprehensive it will be difficult for his Majesty's agent to support with equal evidence his Majesty's claim to the island of Grand Manan in the Bay of Fundy, an island of far more national importance than any of the others."²

Two days later still, August 12, 1816, Colonel Barclay, in a letter to Lord Castlereagh, stated that with reference to Grand Manan it was necessary "to ascertain and establish the most extensive westerly bounds at any time heretofore prescribed to the province of Nova Scotia." The most ancient and formal description of those bounds, he said, was to be found in the grant to Sir William Alexander. These bounds he had already mentioned. But they had been variously described since the original grant was made, and in his letter to Lord Castlereagh, Colonel Barclay called attention to an alteration in the ancient boundaries of the province that appeared in the commission given in 1763 to Montague Wilmot as governor of Nova Scotia, in which the western boundary of the province is thus described: "and to the westward, although our said province hath anciently extended, and doth of right extend, as far as the river Pentagoet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the river St. Croix." Concerning this alteration, Colonel Barclay remarked: "It cannot be doubted that his Majesty in council at the period of altering the

House of Representatives, 1828, 1829, 1835-1838. He died in Portland, July 7, 1843, but was buried in Alfred.

¹ *Correspondence of Thomas Barclay*, 367, 368.

² *Ib.*, 370, 371.

western bounds of Nova Scotia had before him some legal documents by which the original bounds of Nova Scotia, to which the order refers, had been established, to wit westward to the river Penobscot. It is therefore of moment that his Majesty's agent should, if possible, be possessed of the instrument by which the western limits of Nova Scotia were originally established at and by the river Penobscot. Perhaps upon a search in the Council books and papers in the proper offices some clue may be found which would lead to the discovery of this important document. As there is no trace of any grant having been made by his Majesty, or his predecessors, of the island of Grand Manan other than that to Sir William Alexander, and which is constructive and in some measure defective, it will be necessary to produce the next best evidence that Grand Manan heretofore was within the province of Nova Scotia.''

This, Colonel Barclay thought, could be done by showing that, in 1773, the governor and council of the province granted to Lord William Campbell a reservation of the island until the royal pleasure should be made known; that action furnishing proof that the government of Nova Scotia then considered Grand Manan as belonging to that province, unless it were shown that Massachusetts at that time, or previously, laid claim to the island and exercised jurisdiction over it. At all events, as the reservation was made until the king's pleasure was known, it was to be presumed that his lordship petitioned his Majesty to grant the island to him and that something was done with reference to it; so that if the petition and the minutes of the action taken could be found, they would greatly strengthen the present claim.¹

But a difficulty in this claim had evidently been found in a description of the boundaries of Nova Scotia as described in the king's commission to Lord William Campbell in 1766, and to Sir Frances Legge in 1773. In the commission of the latter, as governor, the boundaries are described as follows: "Bounded on the

¹ *Correspondence of Thomas Barclay*, 372, 373.

westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the river St. Croix, by the said river to its source and by a line drawn due north from thence to the southern boundary of our colony of Quebec, to the northward by the same boundary as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence to the cape or promontory called Breton in the island of that name, including that island and all the other islands within six leagues of the coast excepting our said island of St. John, which we have thought fit to erect into a separate government, and to the southward by the Atlantic Ocean from the said cape to Cape Sable aforesaid, including the islands of that name and all other islands within forty leagues of the coast.”¹

The same boundaries of the Province of Nova Scotia, Colonel Barclay had learned, were given in Lord William Campbell's commission; and as from these sources it appeared that the islands within six leagues of the coast are confined to the coast on the eastern side of the Province of Nova Scotia, while they are silent as to those on the western side, he had reason to believe that these descriptions would be made to support the claim of the United States to Grand Manan and the islands of Passamaquoddy Bay. Still, he had an answer to any such claim, notwithstanding his apprehensions with reference to Grand Manan, and that answer he found by attributing inattention to those who framed the commissions.

It had been arranged that the commissioners should meet at St. Andrews, New Brunswick, September 16, 1816, and Colonel Barclay proceeded to Portland, Maine, where he met the American commissioner, Hon. John Holmes, and the American agent, Mr. James T. Austin, who had received his appointment April 11, 1816. On account of adverse winds and calms the members of the party were delayed at Portland several days, and they did not reach St. Andrews until September 22nd. There they found awaiting them the British agent, Ward Chipman, who had repre-

¹ *Correspondence of Thomas Barclay*, 373, 374.

sented Great Britain in connection with the St. Croix commission.

At the first meeting of the commissioners, on September 23rd, Mr. Chipman and Mr. Austin presented their credentials as agents. The claim of the United States was stated by Mr. Austin first, as follows: "That all the islands in the Bay of Passamaquoddy, and the island of Grand Manan in the Bay of Fundy, are each and every of them within twenty leagues of the shores of the United States, and that said islands are severally included within the boundary lines of the said United States as said boundary lines were agreed upon and settled by the second article of the treaty of peace of 1783, between his Britannic Majesty and the United States of America. And the said United States by their said agent not admitting that the aforesaid islands, or any of them, are excepted from the lines including the territorial limits of the United States, by any provision in any article of the treaty aforesaid, the said agent respectfully moves the honorable commissioners to decide, and by a declaration, under their hands and seals, to declare that said islands do severally belong to the United States of America."¹

In presenting the British claim, Mr. Chipman referred to the provision of the treaty of 1783 that gave to the United States "all islands within twenty leagues of any part of the shores of the United States and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are, or heretofore have been within the limits of Nova Scotia," and also to the second article of the treaty, by which "it appears to be clearly intended" that no part of the Province of Nova Scotia should be thereby ceded to the United States. He then outlined an argument to show that the several islands in Passamaquoddy Bay, and the island of Grand Manan

¹ *Manuscript Journal of the Proceedings of the Commission*, library of the Maine Historical Society, 18, 19.

in the Bay of Fundy, belong to Great Britain in conformity with the provisions of the treaty of 1783.¹

After certain agreements as to evidence and plans of rivers, Passamaquoddy Bay and the adjacent coast and islands, the commissioners adjourned to meet in Boston, May 28, 1817. At that place, and on the day appointed, they came together; but on account of illness and adverse winds in the passage from St. John Mr. Chipman, the British agent, did not reach Boston until June 2nd. "On the following day the latter presented his commission, secured during the intermission. June 4th, the American agent commenced his argument, continued it on the 6th and concluded it on the 10th, no meeting being held on June 5th, or on June 8th, which was Sunday. Mr. Chipman commenced and concluded his argument on June 11th."²

Mr. Austin, the agent of the United States, in presenting his argument, after a description of the islands in Passamaquoddy Bay and of the island of Grand Manan, contended that these islands were not included in the exception contained in the clause of the treaty of 1783, "excepting such islands as now are, or heretofore have been, within the limits of Nova Scotia," insisting that these islands had from the beginning of the New England settlements been a part of the territory then belonging to Massachusetts, and so were never within the limits of the Province of Nova Scotia.³ In that connection, and without referring at any length to the grant made by King James in 1621 to Sir William Alexander (which the agent held to have been void *ab initio*, "derelict, abandoned and lost"),⁴ he called attention to the early New England charters, with especial reference to the charter of William and Mary (1691), by which the Colony of Massachusetts

¹ *Manuscript Journal of the Proceedings of the Commission*, library of the Maine Historical Society, 21-26.

² *Ib.*, 33-45.

³ *Manuscript Copy of the Argument*, library of the Maine Historical Society, Part I, 36.

⁴ *Ib.*, Part II, 309, 433.

Bay, the Colony of New Plymouth, the Province of Maine, the territory called Acadia or Nova Scotia, and all the country lying between the Province of Maine and Nova Scotia, were united and incorporated into one province as the Province of Massachusetts Bay in New England,¹ the islands of Passamaquoddy Bay and the island of Grand Manan in the Bay of Fundy, coming in this way into the possession of Massachusetts.

Continuing the discussion, he maintained that the Province of Nova Scotia accordingly ceased at that time to have any independent or separate existence, and the whole seaboard and interior, to whatever government before belonging, became one province, the Province of Massachusetts Bay; that in this province the islands in Passamaquoddy Bay and the Bay of Fundy were certainly included; that to dispossess the government and province of any part of this territory required an explicit renunciation on the part of Massachusetts, either expressed or necessarily implied; and that there had been no action by Massachusetts from which her relinquishment of sovereignty over the islands in question could justly be inferred. Many other points of various degrees of importance were considered. It was easily discoverable that the agent of the United States had given much time and labor to the preparation of his argument, but it was drawn out to such length as to be more than suggestive of weariness in its delivery.

The British agent, in his argument, claimed that the limits of Nova Scotia mentioned in the treaty of 1783 were the same as those designated in the grant to Sir William Alexander, and found support to this view in the negotiations in 1807 with reference to the boundary, which recognized the limits of the Province of Nova Scotia designated in Sir William Alexander's charter.² He also made much of the declaration of the St. Croix commission in establishing the mouth of the St. Croix River at Joe's Point, and in regarding the Passamaquoddy Bay as a part of the Bay of

¹*Farnham Papers*, II, 5, 6.

²*Manuscript Copy of the Argument*, library of the Maine Historical Society, 45, 46.

Fundy. Referring to the unratified convention of 1803, by which Moose, Dudley and Frederick islands were to be relinquished to the United States, "not as belonging to them by virtue of the treaty of 1783, but as lying to the westward of a new line of boundary on this quarter established between the two nations in consequence of the mistaken idea which at that time prevailed" be held "that there was a chasm in the boundary by reason that the Bay of Passamaquoddy was not a part of the Bay of Fundy"; and he added: "But this convention, having never been ratified, and all further adjustment of boundary in this quarter having now become unnecessary by the declaration of the two nations that the Bay of Passamaquoddy is a part of the Bay of Fundy, the United States can no longer claim a right of passage through any channel of these islands to the mouth of the River of St. Croix to the eastward of any of them, to which they cannot establish a right under the treaty of 1783."¹

On the following day, June 12th, the commissioners gave attention to business matters only, and on June 13th, in order that the agents might have time in which to prepare their replies to each other's arguments, the board adjourned until September 25, 1817.² An adjournment to so late a date was not pleasing to Mr. Holmes, who had been elected a member of the national House of Representatives; and he wrote a letter to Mr. Rush, the acting secretary of state at Washington, in which he said: "The survey taken under the treaty of 1794, having been admitted in this case, and all the evidence necessary being produced, it was hoped that the subject would not have been delayed so long. But the agents reluctantly consented to so early a day as the 25th of September. This placed me in an embarrassing situation. This business must be finished before I take my seat in Congress. I still think, however, that there is sufficient time to come to some result before the session of Congress. Mr. Austin is very able, and has been very

¹*Manuscript Copy of the Argument of the British Agent*, library of the Maine Historical Society, 70-74.

²*Manuscript Journal*, library of the Maine Historical Society, 46, 47.

industrious. If the gentlemen reply to each other in September, and should require a further time to rejoin, it may press the business into the winter. I am satisfied that all that will be necessary may be said in time to finish before the session of Congress. I wish to finish if possible, so as not to disappoint the government or my constituents. Did I not believe that justice might be done the subject in that time, I would not urge the agent to make haste, let the consequence be what it might to myself. But I believe that the subject is not attended with much perplexity, and that it might be as well understood after a month's further examination as in ten years. What is the probability of the commissioners agreeing to anything is impossible to divine at present. If we *do* agree, the sooner the people on the frontiers know it, the better. If we *do not*, it will be important that the government should be soon advised of it, that they may adopt ulterior measures."¹

The board reassembled in Boston, September 25, 1818, and meetings were held on successive days, excepting Sunday, until October 1st, the attention of the commissioners being directed by the agents of the two countries to additional arguments. On October 2nd, the board adjourned until October 8th, probably to give the commissioners an opportunity for added conferences. When the commission reconvened the agents asked for an adjournment until "some early day in the ensuing spring" in order that they might have an opportunity of offering such additional observations as might seem to them expedient. Such a request Mr. Holmes had anticipated, for on October 2nd, the day of the recent adjournment, he wrote to John Quincy Adams, the secretary of state, that the arguments and documents in the case already made more than two thousand pages folio. He saw no prospect that the commissioners would be able to agree. Colonel Barclay said he had heard enough, but he was unwilling to take the responsibility of refusing to give the agents a further hearing. In his anxiety to have the case closed before Congress should assemble, Mr. Holmes asked, "What is to be done? All the evidence is

¹ *Senate Documents*, Second Session, 20th Congress, II, 97, 2, 3.

received, and the subject has been literally exhausted. I have told the agents that being satisfied that enough has been said, and that further delay would require my resignation, I am bound to call on my colleague to come to a decision; and in case he is disposed to hear the agents further, after he has expressly stated that he has heard enough, I shall be obliged to consider him as 'refusing, declining, or omitting to act,' and that I must make up a separate report to that effect unless the president shall think that course improper."¹

During the days following the adjournment on October 2nd, the commissioners had ample time before October 8th for frequent conferences. In these conferences Mr. Holmes could not have failed to make known to Colonel Barclay his great desire to have the work of the commission closed without further delay. He, as well as Colonel Barclay, had heard enough, and doubtless Mr. Holmes had not withheld from his associate what he had written to the secretary of state concerning a separate report unless an agreement could now be reached. Colonel Barclay had no desire that the work of the commission should end in that way. He thought it doubtful "whether another commissioner would possess that candor and discretion" which he had observed in Mr. Holmes. He was ready, therefore, to come to an agreement with him inasmuch as Mr. Holmes was willing to assent to such a declaration as that contained in the unratified convention of 1803, in which the United States was represented by Rufus King, and in the agreement attempted by Messrs. Monroe and Pinkney in 1807. Although that declaration was not so favorable to the United States as Mr. Holmes thought it ought to be, yet he believed it better than one declaring disagreement, which otherwise would be the result. Instead of yielding to the request of the agents for another adjournment, the commissioners, on October 8th, expressed the opinion that as the agents had already "done honor to themselves and justice to their respective governments," they saw no reason for added argumentation.

¹ *Senate Documents*, Second Session, 20th Congress, II, 97, 4.

Mr. Holmes' attitude at this time is confirmed in a communication addressed by Colonel Barclay to Lord Castlereagh in a report of his conferences with Mr. Holmes at this stage of the proceedings. "I assured and endeavored to convince him," he wrote, "that from the evidence before the board it was manifest that all islands in question were included in the grant to Sir William Alexander, and consequently appertained to his Majesty; and called on him to unite with me in decision to that effect. This, he of course declined, remarking that such a decision would deprive the United States of Moose Island and the two adjoining small islands, named Dudley and Frederick, which had been decided to them by the convention or treaty in 1803, and by the supplementary treaty of 1807, neither of which it was true had been ratified on the part of the United States, but that they were evidence that Great Britain either considered these islands as belonging to the United States, or was willing to acknowledge them as such, provided the United States would relinquish claim to all the other islands in the Bay of Passamaquoddy."¹ He added that although he was determined not to execute a decision whereby all the islands in question were to be adjudged to belong to his Majesty, yet he was willing to come to a determination which should comport with the principles agreed upon by Earl Liverpool (then Lord Hawkesbury) and Mr. King in 1803, and by Lord Auckland and Mr. Monroe and Mr. Pinkney in 1807.

A business session of the commission was held on October 11th, when the board adjourned to meet in the city of New York, November 24, 1817. On that day the commissioners, having agreed upon the matters referred to them, rendered their decision as follows:²

"By Thomas Barclay and John Holmes, Esquires, Commissioners appointed by virtue of the fourth article of the treaty of peace and amity between his Britannic Majesty and the United States of America, conducted at Ghent, on the twenty-fourth day of December, 1814, to decide, to which of the two con-

¹ *Correspondence of Thomas Barclay*, 391.

² *Manuscript Journal of Commission*, library of the Maine Historical Society, 71-75.

tracting parties to the said treaty the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Manan in the said Bay of Fundy, do respectively belong, in conformity with the true intent of the second article of the treaty of peace of 1783, between his said Britannic Majesty and the aforesaid United States of America.

“We, the said Thomas Barclay and John Holmes, Commissioners as aforesaid, having been duly sworn impartially to examine and decide upon the said claims according to such evidence as should be laid before us on the part of his Britannic Majesty and the United States respectively, have decided and do decide, that Moose Island, Dudley Island and Frederick Island, in the Bay of Passamaquoddy which is part of the Bay of Fundy, do, and each of them does, belong to the United States of America; and we have also decided, and do decide, that all the other islands, and each and every of them, in the said Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Manan in the said Bay of Fundy, do belong to his said Britannic Majesty, in conformity with the true intent of the said second article of the said treaty of 1783.

“In faith and testimony whereof we have set our hands and affixed our seals at the City of New York, in the State of New York, in the United States of America, this 24th day of November, in the year of our Lord 1817.

Witness,
 JAMES T. AUSTIN,
Agt. U. S. A.
 ANTH. BARCLAY,
Sec'y.”

THOMAS BARCLAY, [L. S.]
 JOHN HOLMES, [L. S.]

In a joint letter the commissioners communicated their decision to the two governments. In this letter they explained their action as follows: “In making this decision it became necessary that each of the commissioners should yield a part of his individual opinion. Several reasons induced them to adopt this measure; one of which was the impression and belief that the navigable waters of the Bay of Passamaquoddy, which, by the treaty of Ghent, is said to be a part of the Bay of Fundy, are common to both parties for the purpose of all lawful and direct communication with their own territories and foreign ports.”¹

In his message to Congress, December 2, 1817, President Monroe referred to the decision of the commissioners, and declared his satisfaction with the decision. The British commissioner, in a letter to Mr. Chipman, the British agent, not finding in the message

¹ Moore, *International Arbitrations*, I, 61, 62.

a word concerning "the Bay of Fundy or island of Grand Manan," inferred that the president felt "sore on that point."¹ Mr. Webster, in a letter to Mr. Gray, May 11, 1841, referring to the matter, wrote: "You know we think that Grand Manan should have been assigned to us."² This, evidently had been a very general opinion with those who had given much attention to the matter from the time the decision was made. As has already been stated, Great Britain's claim to Grand Manan presented difficulties that gave anxiety to the British commissioner while searching for evidence in its support; and it may be true that if Mr. Holmes had been less anxious with reference to his seat in Congress and had exhibited, as the representative of the United States, equal firmness and dexterity as the British commissioner, a different decision might have been recorded.

But Colonel Barclay's statement to Lord Castlereagh, as to the way in which the decision was reached, should here be added in justice to Mr. Holmes: "He [Mr. Holmes] appeared astonished that either myself, or his Majesty's agent, had ever been serious in the claim for Grand Manan and [said] that he never would consent to decide that this island belonged to his Majesty. To these remarks I replied by declaring that unless he acceded to my last proposal, the appeal should be made to a friendly sovereign or state. Eventually he agreed to give up Grand Manan, provided I would add the island of Campo Bello to the three I had offered to give to the United States. I told him he had my ultimatum, an ultimatum I had brought myself with much difficulty to offer while under a conviction that his Majesty's title to Moose, Dudley and Frederick islands was beyond dispute. It was not until the morning of the 9th that I could induce the commissioner on the part of the United States to agree to the terms I had proposed, and then with great reluctance and apparent hesitation, and only on condition that I would unite with him in a letter to both governments expressive of our opinion that the eastern

¹ *Correspondence of Thomas Barclay*, 399.

² Webster, *Private Correspondence*, II, 103.

passage from the Bay of Passamaquoddy was common to both nations.''¹

Because of treaty stipulations, as already mentioned, British troops remained at Eastport until June 30, 1818. The designated day of their departure at length dawned, and it was made a memorable day in this most easterly frontier town in the United States. The ceremonies connected with the surrender of British authority centered at the fort occupied by the British garrison, Captain R. Gibbon commanding. Brigadier General James Miller of the regular army had been appointed by the president of the United States to receive the surrender of the place. He was accompanied by his aide, Lieutenant Allanson, while Massachusetts was represented by Lieutenant Colonel Sargent. At seven o'clock in the morning, in the presence of these representatives of national and state governments, of British officers and soldiers of the garrison, of officers and soldiers who were to take their places, and of citizens of Eastport and the surrounding country, the British flag was lowered and replaced by the flag of the United States amid such outbursts of patriotic feeling as found expression in the discharge of cannon, the strains of martial music, and especially in the hearty, prolonged cheers of the witnessing throng. Then the British troops marched to the ships awaiting them, embarked, sailed, and Eastport was left to added exhibitions of the general rejoicing. These were continued on the following day at a public dinner given by the people of Eastport in honor of General Miller. A century of peace between the two great English speaking countries has followed. May the bonds of friendship between Great Britain and the United States, greatly strengthened during this long period and especially in the recent great world war, never again be broken!

¹ *Correspondence of Thomas Barclay*, 394.

CHAPTER V.

THE SEARCH FOR THE "HIGHLANDS."



THE fifth article of the treaty of Ghent contained the following provision for the establishment of the boundary line between the United States and the British provinces above the source of the St. Croix River, as determined by the St. Croix commission:

Whereas neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers which extends from the source of the river St. Croix, directly north, to the above mentioned northwest angle of Nova Scotia; thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy, which has not yet been surveyed; it is agreed that, for these several purposes, two commissioners shall be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article,¹ unless otherwise specified in the present article. The said commissioners shall meet at St. Andrews, in the province of New Brunswick and shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace of 1783, and shall cause the boundary aforesaid, from the source of the river St. Croix to the river Iroquois or Cataraquy, to be surveyed and marked according to the said provisions. The said commissioners shall make a map of the said boundary, and annex to it a declaration under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the northwest angle of Nova Scotia, of the northwesternmost head of Connecticut river, and of such other points of the said boundary as they may deem proper; and both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary. And in the event of the

¹An article referring to the Passamaquoddy islands.

two said commissioners differing, or both or either of them refusing or declining, or willfully omitting to act, such reports, declarations or statements shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the fourth article is contained, and in as full a manner as if the same was herein repeated.¹

As commissioner under these provisions, George III,² September 4, 1815, appointed Thomas Barclay, who had served Great Britain on the St. Croix commission, and also on the commission that determined the boundary line among the islands of Passamaquoddy Bay and the nationality of the island of Grand Manan. April 3, 1816, President Madison, with the advice and consent of the Senate, appointed as the commissioner for the United States, Cornelius P. Van Ness, of Vermont.³ The two commissioners, sailing from Portland, August 17, 1816, arrived at St. Andrews on the 22nd, and entered upon the consideration of matters to which their attention had been directed. Henry H. Orne, of Massachusetts, was made the secretary of the commission, while Ward Chipman, who had been the British agent in connection with the St. Croix commission, and his son, Ward Chipman, Jr., appeared as agents for Great Britain, jointly or separately; but as at this time no agent for the United States had been appointed, the commission, after a session of two days, adjourned to meet in Boston, June 4, 1817. When the commission reassembled at that time, Mr. William C. Bradley, of Vermont, whom President Madison, February 17, 1817, had appointed agent for the United States, appeared and entered upon the duties of his office. Colonel Joseph Bouchette, surveyor general of Quebec, was appointed chief sur-

¹ *American State Papers*, II, 746, 747.

² In 1811, George III became hopelessly insane, and during the rest of his reign the government was administered under the regency of the Prince of Wales, afterward George IV. George III died January 29, 1820.

³ At the time of his appointment Mr. Van Ness was the United States district attorney for the State of Vermont. Subsequently he was collector of the port of Burlington, chief justice of Vermont, governor of the state, United States minister to Spain, and later collector of the port of New York.

veyor for Great Britain, with Colin Campbell and Joseph Bouchette, Jr., as his assistants; while John Johnson was made chief surveyor for the United States, with Mr. Turner and Mr. Burnham as his assistants.

Conferences were held in Boston with reference to the work of the commission. June 11th, the commissioners approved, under eleven articles, instructions which had been prepared for the surveyors, by the agents of the two governments. These directed the surveyors, with their chain-bearers, ax-men and other assistants, to repair without delay to St. John, New Brunswick, and thence, with the necessary provisions and other supplies, to proceed up the river St. John to a point from which they could most conveniently make their way to the source of the St. Croix River "near a yellow birch tree, hooped with iron and marked S T and J H 1797."¹ There, they were to divide into two parties, each to be placed under the direction of such assistant surveyors as the respective agents should select; then, commencing the survey, and running the line due north upon a meridional line, they were to continue their work until further orders.

By article sixth of the instructions, Colonel Bouchette and Mr. Johnson, chief surveyors, with a sufficient number of each party, were directed, while the survey was in progress, to make an exploring survey "following a line due north from the declared source of the St. Croix river" until they should arrive at some one of the streams or waters which are connected with the river St. Lawrence. They were also to "explore the different highlands which lie between the last mentioned line and the north-westernmost head of Connecticut river."²

The work of the first of these parties, Colonel Barclay regarded as "a simple operation," but with reference to such "highlands" as would satisfy the expectations naturally raised by the second

¹ The capital letters stand for Samuel Titcomb and John Harris, the surveyors employed to survey the northern branch of the St. Croix River to its source.

² *Manuscript Journal of Proceedings*, State Library, 19-30

article of the treaty of 1783, he said he was doubtful.¹ The language of the treaty seems to have been borrowed from that found in a proclamation of the king of Great Britain, October 7, 1763, in establishing the line between the Province of Quebec and the Province of Nova Scotia, making the line to pass "along the highlands which divide the rivers that empty themselves into the said St. Lawrence from those that fall into the sea."² Then, and for some time later, very little was known on this side of the Atlantic about the country in that remote region, and still less was known in England. The use of the word "highlands" instead of mountains, in this proclamation of 1763, would naturally indicate a watershed dividing the rivers that fall into the sea or ocean from those that empty themselves into the St. Lawrence; and the negotiators of the treaty of 1783, by their use of the word "highlands" in their designation of the boundary line between the point where the due north line from the source of the St. Croix River strikes these highlands, had no better information than that contained in the king's proclamation. But when Judge Sullivan, in 1795, published his *History of the District of Maine*, he inserted a map on which, from the point where a due north line from the source of the St. Croix River would strike the watershed, he represented a line of mountains extending in a southwesterly direction to the northwesternmost head of the Connecticut River. There are no such mountains in the same location on Mitchell's map of 1755, which was used by the negotiators of the treaty of 1783. In fact, as early as 1802, because of better information, Judge Sullivan, as appears in a letter which he wrote to Madison on May 20th of that year, had corrected his own views concerning that region. The commissioners employed by the British government in running the line between the Province of Quebec and that of Nova Scotia, evidently looking for mountains and not a watershed, failed to find the "highlands" mentioned in the king's proclama-

¹ *Correspondence of Thomas Barclay*, 374, 375.

² *Report of the Joint Select Committee of the Senate and House of Representatives of the State of Maine in Relation to the N. E. Boundary, 1828.* Appendix VI.

tion. "I have seen one of them," wrote Sullivan to Madison referring to these commissioners, "who agrees with the account I have had from the natives and others, that there are no mountains or highlands on the southerly side of the St. Lawrence, and northeastward of the Chaudière. That, from the mouth of the St. Lawrence to that river, there is a vast extent of high flat country being a morass of millions of acres. . . . That the rivers originating in this elevated swamp pass each other wide asunder, many miles in opposite courses, some to the St. Lawrence and some to the Atlantic sea. Should this description be founded in fact, nothing can be effectively done, as to a Canada line, without a commission to ascertain and settle the place of the northwest angle of Nova Scotia, wherever that may be agreed to be; if there is no mountain or natural monument, an artificial one may be raised."¹

This assumption by Judge Sullivan, that "highland" in the treaty of 1783 meant a ridge or watershed, was accepted by Mr. Madison, and in his instructions to Mr. King, to guide him in his negotiations with Lord Hawkesbury, Mr. Madison, in accordance with this assumption, proposed the appointment of a commission "to determine on a point most proper to be substituted for the description in the second article of the treaty of 1783, having due regard to the general idea that the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence. The commissioners may be also authorized to substitute for the description of the boundary between the point so fixed and the northwesternmost head of Connecticut river, namely, a line drawn along the said highlands, such a reference to intermediate sources of rivers or other ascertained or ascertainable points, to be connected by straight lines, as will admit of easy and accurate execution hereafter, and as will best comport with the apparent intention of the treaty of 1783." In other words, the line indicated in the treaty

¹*American State Papers*, II, 587.

was incapable of execution, and this important recognition of the British claim found here official expression in such a way as to be the occasion of embarrassment afterwards to those supporting the American claim. "Governor Sullivan's blunder in that respect," wrote Mr. Gallatin at a later period in the boundary controversy, "was the source whence arose our difficulties, and which led our government to declare, in fact, that in its opinion there were, in the topography of the country, obstacles to the execution of the treaty."¹ And yet, Mr. Madison really conceded nothing of any importance. The negotiators of the treaty of 1783, with Mitchell's map before them, on which there was no line of mountains reached by a line due north from the source of the St. Croix River and extending southwesterly to the northwesternmost head of Connecticut River, could not have meant by the word "highlands" anything more than a watershed from which, as specifically mentioned, rivers flowed, some into the St. Lawrence and some into the sea. In fact, the idea underlying Governor Sullivan's statement was that the substituted line should be drawn as nearly as possible through the region where the "highlands" had been supposed to exist. Nevertheless, the Sullivan letter and Madison's instructions based upon it, having been communicated to Congress and made a matter of public record, was a concession in words of which much was made.

During the war of 1812-1815, Great Britain naturally gave little attention to boundary matters except as connected with peace negotiations at the end of the war. Allusion has already been made to renewed British designs with reference to an extension of the boundary from the St. Croix to the Penobscot. During the war the isolated position of the maritime provinces, Nova Scotia and New Brunswick, suggested the importance of securing if possible shorter and otherwise more desirable communications with Canada; and what was said along this line was strongly emphasized by military considerations. Accordingly, on the part of the

¹ Letter to Charles S. Daveis, of Portland, *Writings of Albert Gallatin*, II, 546.

inhabitants of these two provinces, as the war drew to a close, efforts were made for obtaining in any renewal of boundary considerations such a change in the north line as would meet the object they had in view. This object found expression in the following resolve adopted by the New Brunswick House of Assembly, February 15, 1814: "*Resolved*, That the Council be requested to appoint a committee, to meet a committee of this House, for the purpose of preparing a humble petition to his Royal Highness, the Prince Regent, praying that when a negotiation for peace shall take place between Great Britain and the United States of America his Royal Highness will be graciously pleased to direct such measures to be adopted as he may think proper to alter the boundaries between those states and this province, so as that the important line of communication between this and the neighboring province of Lower Canada, by the River St. John, may not be interrupted."

Indications of the influence of this resolve are discoverable in the preliminary negotiations connected with the treaty of Ghent, when on August 8, 1814, the British representatives made to the American negotiators a proposal for a revision of the boundary line between the British and American territories "with a view to prevent future uncertainty and dispute,"¹ which, in a note to the negotiators dated August 18th, was otherwise stated as meaning "such a variation of the frontier line as may secure a direct communication between Quebec and Halifax."² When to this suggestion the American commissioners at Ghent, August 24th, replied that they had "no authority to cede any part of the territory of the United States," the British commissioners, September 4th, made an added suggestion that their "proposal left it open for them [the United States commissioners] to demand an equivalent for such cession in territory or otherwise, and that an arrangement on this point might be easily made, if entered into with the spirit of conciliation, without any prejudice to the interests of the

¹*American State Papers*, IX, 330.

²Ganong, *Boundaries of New Brunswick*, 314.

district in question." The American commissioners, September 26th, declined to enter upon the consideration of such a revision of the boundary line, "an alteration which could not be effected without a cession by the United States to Great Britain of all that portion of the State of Massachusetts intervening between the Province of New Brunswick and Quebec, although unquestionably included within the boundary lines fixed by that treaty." Returning to the matter again on October 8th, the British commissioners disclaimed any request for "all that portion of Massachusetts between the Province of New Brunswick and Quebec," having in view, they said, "only that small portion of unsettled country which interrupts the communication between Halifax and Quebec, there being much doubt whether it does not already belong to Great Britain."¹

This correspondence reveals the gradual disclosure of the British claim with reference to the northern boundary. At first all that was proposed was a revision of the frontier for the purpose of preventing disputes; next, it was such a variation of the boundary line as would secure a direct communication between Quebec and Halifax; and when to this the American commissioners made objection that they had no authority to cede any part of the territory of the United States, the British commissioners still pressed their appeal, urging the added statement that the proposal left it open for the United States to demand for such cession an equivalent in territory or otherwise, thus admitting that the line described in the treaty of 1783 was understood by them to be a

¹*American State Papers*, IX, 381, 405, 415. "It was the military authorities at Quebec who first perceived the importance of the subject, and the case was very clearly stated by Lord Dorchester, Governor General of British North America in 1785, to whom belongs the credit not only of perceiving the issue clearly but also of formulating the claim for a boundary at the central highlands, afterward adopted by Great Britain and maintained until 1842." Ganong, *Boundaries of New Brunswick*, 305. The statement in Winsor's *Narrative and Critical History of the United States*, VII, 174, that the British claim had its origin in the war of 1812, therefore, must be regarded as erroneous.

line that prevented direct communication between Canada and the maritime provinces. In other words, the line they now sought was within the limits of the United States, and could be obtained by cession of territory only, and not of right.

The early work of the surveyors indicated harmonious relations between the two parties. In the summer of 1817, both the American and British chief surveyors, Bouchette and Johnson, diligently prosecuted their united efforts to find the "highlands" of the treaty of 1783 by a due north line from the source of the St. Croix. Crossing the St. John River, they came at length to the watershed between the St. John and the Restigouche, where they stopped in consequence of having fulfilled their instructions, according to a letter from Bouchette to Ward Chipman, January 7, 1818—a clear indication that at that time Bouchette believed that the "highlands" of the treaty were there. In his report, referring to this watershed, he said: "This part of the country is conspicuously high and is the summit of a range of highlands which stretches towards the southwest, and another branch seems to detach itself at no considerable distance to the west in a northwest direction. The descent at the Wagansis is steep and continues descending alternately by gradual and steep ridges to the Great Wagansis or first branch of the waters of the Restigouche."¹ Mr. Johnson, in his report, made a like statement with reference to the highlands: "Passing through a large swamp, which gives rise to the Wagansis or Grand river we crossed the ridge called Sugar Mountain, which divides the waters of the St. John river from those of the Restigouche river, and is evidently the highest land we passed over during the season. The extent of the ridge is not particularly known, but it probably extends to the west and northwest on the one hand and to the east on the other, sufficiently to divide the waters of the above said rivers."²

¹*Appendix to the British Agent's Reply*, State Library, 16.

²*Ib.*, 31, 32. The British commissioner and agent were not satisfied with the services of Mr. Bouchette and he was soon displaced. Although he was

Later in the progress of the work of the surveyors, it was evident that those having charge of British interests were intent upon finding the "highlands" in the region of Mars Hill. Success in this direction, it was found, would give the maritime provinces that easy direct communication with upper Canada, which, with the growth of the British provinces in North America, appeared increasingly desirable. Those in charge of the interests of the United States, on the other hand, sought a boundary line by carrying the due north line from the source of the St. Croix River to the "highlands," that is, to such elevations of country as divide the "rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean," strictly adhering to the language of the treaty of 1783, and having in view no loss of territory deemed rightfully to belong to the United States. Doubtless, to the instructions received by the agents and communicated by them to the surveyors, there were added injunctions suggested by the importance of the work intrusted to them. "We must exert ourselves," wrote Colonel Barclay to Mr. Chipman November 8, 1817. He rightly saw that the task in hand was one of far greater importance than was assigned to the St. Croix commission, or was imposed by the controversy over the Passamaquoddy islands. Especially must the present British claim have been regarded as calling for a supreme effort from the fact that Mr. Chipman, during the St. Croix controversy, had taken the position that the north line from the source of the St. Croix river would not only of necessity cross the St. John River, but would cross it in part almost at the foot of the highlands, and where the river ceased to be navigable. In his private letters Mr. Chipman expressed the same conviction. In New Brunswick, in the earlier period of the controversy, this was the generally accepted opinion of the boundary line. From various the surveyor general of Canada, Mr. Chipman now found that he was wanting in at least "practical professional knowledge, prudence, nerve and constitution, and on the whole . . . not a character in whom a matter of so much moment as ascertaining the northwest angle of Nova Scotia can with safety be confided." *Correspondence of Thomas Barclay*, 401.



MARS HILL.



ous documents it is shown that in this province, so closely related to boundary concerns, the opinion "was apparently unanimous that the due north line, according to the words of the treaty must cross the St. John and run to the northern highlands, as the Americans claimed, thus cutting off the communication by the Madawaska."¹ Because of the British claim as now advanced, however, the importance of a supreme effort was recognized just as clearly by the United States commissioner and agent, as by Messrs. Barclay and Chipman.

The commissioners had adjourned to meet in New York, May 12, 1818, unless it should appear that some other day would be considered more desirable. As the appointed day approached, they decided to make a different arrangement, and called a meeting of the board at Burlington, Vermont, May 15, 1818. At the session of the board in that place, some time was spent in examining accounts, and in receiving the reports of the surveyors. While the work already done was in progress, differences in the matter of procedure had developed, and to these differences the British agent early called the attention of the commissioners. In his opinion any extension of the line due north from the source of the St. Croix, as proposed, would not determine the point where it would intersect any highlands that could be found; and if it should be thought best later to run such a line this could be done then with equal profit to both parties. He accordingly suggested that the instructions adopted the year before with reference to that line should now be suspended, and that the surveyors should give their attention to an exploring survey of the highlands, the survey to commence at the highlands lying nearest to the source of the St. Croix, namely "in that tract of country lying in the neighborhood of the River Restook [Aroostook] and Des Chutes [De Chute] and extending thence towards the sources of the River Chaudière and Kennebec," in which tract of country the British agent thought he had good cause to believe that the highlands mentioned in the fifth article of the treaty of Ghent

¹ Ganong, *Boundaries of New Brunswick*, 309-312.

would be found. The agent of the United States objected to any such relinquishment of work partially accomplished; especially as the line, if advanced in accordance with the instructions already adopted, would bring the explorers into a section of country not generally known, and in which, as the representative of the United States, he believed the highlands of the treaty of 1783 would be reached.¹

The commissioners, because of these differences on the part of the agents of the two countries, directed that the exploration of the due north line should be continued as directed, and that when that service was completed the exploring survey of the highlands should commence in that tract of country suggested by the British agent, namely in the Mars Hill country, and continue "until all the highlands between the northwesternmost head of the Connecticut river and the whole extent of the said due north exploring line," should be examined to the satisfaction of the agents of the two governments. At this meeting William T. Odell was made chief surveyor on the part of Great Britain in place of Joseph Bouchette, and the board adjourned to meet in Montreal, Canada, on May 29th. At Montreal one meeting was held, and then the commissioners proceeded to St. Regis, to which place the board adjourned to meet on June 3rd. Delay at St. Regis was occasioned by the late arrival of the chief astronomer on the part of the United States, Mr. Hassler, detained by illness. Directions were now formulated for Mr. Hassler's work, and the board adjourned to meet in New York, November 30, 1818, unless the commissioners, before that time, should agree to reconvene at a different time or place.²

Previous to November 30th, ascertaining that the astronomers and surveyors would not be prepared at the close of November to make a report of their operations, the commissioners postponed the meeting until May 5, 1819, when the board reassembled in New York. There, reports were received from the astronomers

¹*Manuscript Journal of Proceedings*, State Library, 50-55.

²*Ib.*, State Library, 56-63.

and the surveyors. Among these reports were those of Mr. Odell and Mr. Johnson, who had completed their survey of the due north line from the source of the St. Croix, until, not far from Beaver River, they reached a watershed dividing the waters that empty themselves into the St. Lawrence from those that fall into the Atlantic Ocean. Mr. Johnson, in his report, made mention of "the ridge" which divides these waters; but Mr. Odell called the elevation "very small," and said there was "no appearance of highlands." Then the surveyors made their way to Mars Hill and examined a part of the line of the British claim as now urged, including "several peaks of Mars Hill."¹

At the meeting in New York, May 5, 1819, Mr. Chipman, in a memorial, called attention to the work of the exploring parties. Lack of harmony on the part of the agents now appeared as the British agent called the attention of the board to the papers submitted by the agent for the United States, among which were a report of the chief surveyor of the United States and a map of the country explored in 1817 and 1818. Objection was made to delineations upon this map not derivable from actual surveys, but from information obtained from sundry "intelligent persons," whose long acquaintance with the country, according to the report, had enabled them to give a very particular description, but which the British agent attributed to "the unfounded suggestions of an over-hasty zeal." Only "mischievous consequences" would result from silent acquiescence in proceedings so unprecedented and unwarrantable, he said;² and he requested that neither the report nor the map should be permitted to remain on the files of the proceedings of the board.

On the following day, the agent of the United States replied to these statements. He resented the use of such phrases as "unfounded suggestions," "over-hasty zeal," "mischievous consequences," etc. *Ex-parte* information, he said, would be found in British reports. Certainly nothing could be more "loose" and

¹ *Appendix to the British Claim*, State Library, 46-55, 59-67.

² *Ib.*, 60-64.

ex-parte than an attempted description of a source of a river, made by a British surveyor, on the authority of one who derived his information from the Indians. This great controversy, he remarked, will not be decided by any exceptions of this nature, but according to those just and liberal principles which are most consonant with good faith and the exalted character of the governments that had confided to the commission this weighty and honorable trust.¹

Added heat was developed as other memorials followed along the same line; but the commissioners, differing in opinion, took no action with reference to the British agent's request to have the objectionable report and map removed from the file. New instructions for the surveyors, however, as prepared by the agents, were adopted for the further prosecution of their work. Additional proceedings as to the due north line from the source of the St. Croix River were suspended for the present, and attention was directed to that part of their work that had reference to the northwest angle of Nova Scotia, and the highlands dividing the rivers emptying into the St. Lawrence from those that fall into the Atlantic Ocean.

In the first place they were to explore the Mars Hill region; also the tract of country in the neighborhood of the Aroostook River, then known as the Restook. Thence they were to proceed to the sources of the Chaudière and Kennebec rivers, and the highlands near the sources of the Penobscot. This was at the request of the British agent. At the request of the agent of the United States, they were to make their way to the country north of the St. John River, and explore carefully all the highlands in that region. In making these explorations, the surveyors were to work "diligently, amicably and impartially" in order to carry into effect the object of their explorations, namely, "to obtain a general and correct knowledge of the face of the country for the information of the commissioners without expecting any advantage to be derived from priority of one survey over the other

¹ *Appendix to the British Claim*, State Library, 67-78.

in point of time." For the purpose of avoiding misconceptions and mistakes the two parties from day to day, if practicable, were to communicate to each other all observations and other particulars which they intended to include in their reports and plans of survey; while, if there should be a difference of opinions "as to the necessity of any particular part thereof for the purpose of obtaining a proper knowledge of the section of country under examination," the surveyor deeming such a particular survey necessary was to require it, in writing, of the other, who was directed to comply with the request "after noting his objection thereto in his journal."¹ The commissioners then adjourned to meet in Boston, on the first Monday in May, 1820.

During the summer, the work of the surveyors seems to have proceeded amicably, but the plans outlined at New York were executed only in part. Both parties proceeded to Mars Hill as directed, reaching the place July 7, 1819; but the weather proved unfavorable on account of continued haziness preventing expected observations, every distant object being obscured. But as the bearings of the most conspicuous hills and mountains had been taken in the preceding year, the British agent saw no occasion for delay in order to secure better atmospheric conditions, while the agent for the United States confided to him his own opinion that any "highlands" in that neighborhood had nothing to do with questions under consideration by the commission. It was amicably said; but the increasing boldness of the British in pressing their Mars Hill claim, in opposition to the plain description of the boundary line in the treaty of 1783, was already stirring feelings of hostility that were surely to become more and more embittering as the controversy continued. Later efforts by the surveyors to get to the head of the waters of the St. John or the Penobscot by way of the Aroostook River, as the British agent desired, were found impracticable on account of low water in both branches,

¹*Appendix to the British Claim, 99-104.*

and the plan was abandoned. The season accordingly closed with the objects of the survey largely unaccomplished.¹

Instead of meeting in Boston on the first Monday in May, 1820, the board, by agreement of the commissioners, reconvened on May 11th. The journal furnishes evidence of increasing unpleasantness in the relations of the agents of the two countries. The exploration surveys of three seasons had accomplished little in locating the northwest angle of Nova Scotia; and though the wilderness in which the surveys were attempted presented many obstacles, there was nevertheless a widespread opinion that delay had been occasioned for the purpose of obtaining some support for what was regarded as an indefensible claim, especially in Maine, which had now become a state, and so was prepared to take a more active part than hitherto in defending territory believed by the people of Maine to be unjustly claimed. This growing public dissatisfaction is recognized in additional instructions adopted by the commission at this time for the purpose "of carrying the existing instructions into execution with more dispatch,"² these existing instructions having reference to surveys on the north and south sides of the St. John River. On June 2nd, the board adjourned to meet in the city of New York, October 23, 1820.

When that day approached, it being understood that the agents were still waiting for the surveyors' reports and maps before presenting their arguments, the commissioners agreed not to summon them, and it was decided to hold the next meeting of the board in New York on November 23rd. Only three sessions were then held, and after directing the agents to "come prepared at the next meeting of the board with their arguments, if any they have to submit," the commissioners adjourned November 27, 1820, to meet in the city of New York, May 14, 1821.³

¹ Report of Chief Surveyor Odell (British), September 18, 1819, in *Ward Chipman MSS.*, Maine Historical Society.

² *Manuscript Journal of Proceedings*, State Library, 121.

³ *Ib.*, 124-127.

November 21, 1820, the national House of Representatives called upon the president of the United States for information respecting the progress of the commissioners in establishing the northeast boundary and the expenses already incurred. This inquiry brought out the fact that no information with reference to this expense had been received by the government at the date of the president's message. Mr. Van Ness, in a letter occasioned by this congressional inquiry, said he supposed that the American agent had furnished the desired information, but the letter, it was said, contained "no disclosure of past exertions or future prospects." At the opening of 1821, Mr. Van Ness informed the secretary of state that all the surveys relating to the northwest angle of Nova Scotia and the northwesternmost head of the Connecticut River had been completed. With reference to the expenses of the commission, a treasury report showed that to December 8, 1820, there had been paid for salaries and expenses, under the fifth article of the treaty of Ghent, \$99,099.10.

On May 14, 1821, the commissioners met in New York, but the British agent had not arrived on the 15th, "the wind being unfavorable." Mr. Chipman, having arrived from St. John, was present on the 23rd, however, and on the following day, in a memorial, he renewed a proposal, made at a previous meeting, to take up matters with reference to the northwest angle of Nova Scotia. Such a discussion, he believed, would enable him to make a favorable impression for the British case. The importance which he attached to such a discussion he expressed November 6, 1820, in a letter to Colonel Barclay, in which he said: "The question of the northwest angle of Nova Scotia must depend upon the single point whether the river St. John is one of the Atlantic rivers to be divided by the treaty; and upon this ground, I perceive our cause to be impregnable."¹

To such a discussion, covering only a single point, the American agent objected, as he had objected previously when the same request was made; and he suggested that a day should be fixed

¹ Letter in the *Ward Chipman MSS.*, Maine Historical Society Library.

by the commissioners in which the agents of the two governments should present arguments covering all points bearing upon the questions before the commission. The board then "ordered, that on Friday next [June 8, 1821] be assigned for reading the arguments of the respective agents."¹ The arguments, however, were not presented, though the order certainly was sufficiently definite. On the day appointed the British agent presented a memorial covering twenty-eight pages, in which he sought to relieve himself of any responsibility for the delays that had occurred in connection with the surveys; and the agent of the United States, on the following day, expressed his desire to make a reply to the British agent. As the commissioners were ready to adjourn, however, he gave notice that he would avail himself of an early opportunity for such a reply at the next session. The board then adjourned to meet in New York, August 1, 1821. The commission reassembled at that time, but no business was transacted until August 6th, when the agent for the United States, in a memorial covering forty-two pages of the journal, replied to the memorial of the British agent presented at the previous session. At last, on August 10th-14th, the agents presented their arguments.

The American agent, Mr. Bradley, in his argument first directed attention to considerations with reference to the angle mentioned in the treaty of 1783, formed, he said, by the intersection of a line drawn due north from the source of the St. Croix River and the highlands, making the angle. The highlands which divide the waters emptying into the Atlantic from those connected with the St. Lawrence, it was argued, are those which by separating them leave the Atlantic streams on the one side and the St. Lawrence on the other. That these lands had been shown to be sufficiently elevated as to be worthy of this designation was demonstrated not only by the great length of the rivers which run from them into the sea, but also by the evidence furnished by the surveyors. The way in which the highlands were to be reached had been made clear in the treaty of 1783, viz., by a line drawn

¹ *Manuscript Journal of Proceedings*, State Library, 160.

the evidence was found to be most satisfactory. On this line there were no other "highlands."¹

But especially was Mr. Bradley forceful in the historical part of his argument. In this he referred to the British conquest of Canada from the French in 1763, when the boundary of Lower Canada, fixed by a royal proclamation, was a line which "crossing the river St. Lawrence and Lake Champlain in forty-five degrees of north latitude," passed "along the highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea," giving to the inhabitants near the St. Lawrence, on its southern side, the lands watered by its tributary streams. Previous to this proclamation, continued the agent, "the British provinces to the south, advanced their just claims to a much higher extent, while on the other hand the pretensions of the French government were carried far below the limits of their respective charters. It was evidently the intention of the British government by this proclamation, to make such an arrangement of the boundary, that precisely the section of country lying below the sources of the streams which empty themselves into the St. Lawrence, and no more, should be placed under the provincial government established on the banks of that river."²

The argument of the British agent, Mr. Chipman, was largely directed to a consideration of the intention of the negotiators of the treaty of 1783 in their description of the northeastern boundary. Here, in this description as he clearly saw, the American case found its stronghold, and unless it could be overthrown, or in some way rendered of no effect, the British case, as now presented, had no hope of success. The "highlands," he said, must be sought elsewhere, and the treaty description must be interpreted by its intentions. One of these, he claimed, was to make a boundary on the basis of mutual convenience and reciprocal advantage. It was not intended by the treaty to cut off the

¹ *Manuscript of Opening Argument of the Agent of the United States*, State Library, II, 26-30.

² *Ib.*, State Library, 48-52.

due north from the source of the St. Croix River; and here also maritime provinces from easy communication with Quebec and Montreal. Furthermore, it was the intention of the negotiators to give each nation the sources of the rivers emptying through its territory, and hence, as the St. John was to flow through British territory, the boundary must lie south of it. The word "highlands" in the treaty, also, was interpreted as signifying "well known very elevated and conspicuous heights of land," such as Mars Hill and other hills or mountains at points westward along the line of the British claim, and therefore could not mean any watershed reached by a directly north line from the source of the St. Croix river, and dividing the waters emptying into the river St. Lawrence from those that fall into the Atlantic Ocean."

The following, concerning Mr. Chipman's argument, is a correct as well as a concise statement. "The British agent claimed Mars Hill as the desired point; and while it must be admitted that he supported it by remarkable dexterity of reasoning, it must also be conceded that he did not exceed the requirements of his pretensions. Mars Hill is in every direction at least a hundred miles distant from the sources of any of the rivers that empty into the River St. Lawrence. The only streams it divides are two small tributaries of the River St. John, which flows into the Bay of Fundy. So that, according to the British agent's contention in regard to the Restigouche, Mars Hill does not divide rivers falling either into the River St. Lawrence or into the Atlantic Ocean. It was pre-eminent for fulfilling none of the conditions of the treaty of 1783, except, perhaps, that it was a high elevation."¹

Inasmuch as an earnest wish had been expressed on the part of both governments that the tedious and expensive work of the commission should be brought to a close with all practicable dispatch, the British agent declared his willingness to submit to the decision of the board without further argument unless the agent for the United States should ask for an added hearing. This the latter requested, not because new positions which could not have

¹ Moore, *International Arbitrations*, I, 78.

been anticipated had been taken by the British agent, he said, but because reference had been made to documents not before the commissioners previously, and particularly papers which were understood by the agents to have been withdrawn at the request of his Britannic Majesty.¹

Other memorials followed, and on August 14, 1821, the board adjourned to the 20th of September, when more memorials were presented and read. On September 27th there were added arguments, and also on the 29th. At the meeting on October 2nd, the commissioners passed an order that all the reports and plans alluded to in the memorials of September 26th, 27th, and 29th, should be filed by the secretary except the two general maps, and it was added: "On the subject of the said general maps no order allowing them to be filed is made as the commissioners differ in opinion, Commissioner Barclay being in favor of allowing the general map presented by his Majesty's agent to be filed and of excluding that presented by the agent of the United States; and Commissioner Van Ness being of the opinion that both of said general maps ought to be filed, or neither of them. On the question of going into an examination at this time of the surveyors, under oath, the commissioners differ in opinion, Commissioner Barclay being in favor of that course and Commissioner Van Ness against it."²

This record in the journal foreshadowed the hopelessness of any agreement on the part of the commissioners of the two governments. With only a deadlock in prospect, argument had become a weariness. Under these circumstances the board adjourned October 4, 1821, to meet in the city of New York on the first Monday in April, 1822.³

At this adjourned meeting some time was spent in examining accounts, etc. On April 13th the commissioners filed notes in

¹ *Manuscript Journal of Proceedings*, State Library, 239, 240.

² *Ib.*, 304.

³ *Ib.*, State Library, 309.

which October 21, 1821, they had recorded their differing opinions, and which were now placed in the journal of the proceedings of the commission. Colonel Barclay, on the question as to the northwest angle of Nova Scotia, took the position that the point ought to be established at or near Mars Hill, about forty miles on a due north line from the source of the St. Croix River and about thirty-seven miles south of the river St. John. On the question as to the northwesternmost head of the Connecticut River he was of the opinion that it is at the northwesternmost stream which empties into the third lake of the Connecticut River, north of the forty-fifth degree of north latitude. Mr. Van Ness was of the opinion that the northwest angle of Nova Scotia ought to be fixed at a place one hundred and forty-four miles due north from the source of the river St. Croix and about sixty-six miles north of the river St. John. On the question as to the northwesternmost head of the Connecticut River, he was of the opinion that the head should be established at the head of the west branch of Indian Stream.

On the same day the commissioners, in accordance with the provisions of the treaty of Ghent, delivered to the agents of the respective governments duplicates of their reports, accounts and proceedings, and these were transmitted to the two governments interested.

It was in order that the commissioners might have time for the preparation of these reports that the board adjourned October 4, 1821. The reports are on file in the office of the secretary of state in Washington, but as yet they have not been published in full. The disagreement of the commissioners was not unexpected, but it was disappointing. Mr. Adams regarded it as unfortunate, as it made a settlement of the boundary controversy more difficult than ever. The report of the British commissioner, he said, was a labored attempt to support the position taken by the British agent, "in which ingenuity maintains an endless argument against common sense."¹ Mr. Gallatin, who had occasion

¹ *American State Papers*, V, 526.

to examine the reports carefully, considered that of Mr. Van Ness as "conclusive and remarkably well-drawn," while he characterized that of Colonel Barclay as "scandalous." Mr. Gallatin's mention of the argument of the British agent, Mr. Chipman, was even more severe, declaring it "a tissue of unfounded assertions and glaring sophistry." Ganong, admitting the rightfulness of the American claim as based on the description of the boundary in the treaty of 1783, and therefore finding no ground for identifying Mars Hill with the highlands of the treaty, objects to Mr. Gallatin's use of the words "unfounded assertions" as too harsh, Mr. Chipman being considered as very careful in his "statement of fact." As to the "sophistries," however, he frankly says the judgment is correct. "Chipman did indulge in sophistries, but it was that or nothing. He was an advocate with a very weak case to defend." He had no case whatever, and was using his "wits," allowing "his imagination free play" in the endeavor to make a case.¹

With the filing of the reports of the commissioners, the long, laborious and expensive work of the commission came to an end, and the commissioners, having entered upon the journal their failure to agree, voted to adjourn, subject, however, "to the pleasure of the two governments whether in any event to hold any further meetings or perform any further services."² Further services were not requested.

¹*Boundaries of New Brunswick*, Proceedings of Royal Society of Canada, 1901-1902, 330.

²*Manuscript Journal of Proceedings*, State Library, 315-320.

CHAPTER VI.

MAINE ENTERS THE BOUNDARY CONTROVERSY.



MAINE became a member of the Federal Union March 15, 1820, in accordance with an act of Congress passed on March 3rd. Next to the general government, Massachusetts hitherto had manifested the deepest interest of any of the states in the boundary controversy. This was because of her geographical position, and her vigilance in matters pertaining to her territorial rights. Maine, now, took the place of Massachusetts, exhibiting soon even a keener interest in the contest than the old commonwealth.

While Maine was still a part of Massachusetts something already had been accomplished in bringing American settlers into the Madawaska region. September 5, 1818, a French resident at Madawaska informed the New Brunswick authorities that several American families from the Kennebec River had made their way thither and established themselves, claiming that they were within the jurisdiction of the United States and not that of New Brunswick.¹ This letter came into the hands of the lieutenant governor of the province, who directed the attorney general to obtain more particular information. Accordingly, January 9, 1819, the informant was asked to obtain the names of American citizens, who during the past eight months had taken up their residence in the Madawaska settlement, or anywhere near it, "westward of the line of experiment lately run across the river St. John, and the particular places where they may have set themselves down." The reply under date of February 20, 1819, was as follows: "Captain Nathan Baker² came to Madawaska twelve months ago.

¹*American State Papers*, VI, 849.

²John Baker, another American who was to become more prominently identified with the beginnings of the American settlement in the Madawaska region, was a brother of Nathan Baker, and in 1820 followed him into that country and was connected with him in lumbering.

At that time he wished to introduce the laws of the States; brought a magistrate along with him from the States to form a corporation, and desired my concurrence. I told him I would have nothing to do with such matters before the line was settled between the British government and the States. I likewise told the rest of the French settlers to have nothing to do with him about such matters, which they did. In August last he brought his wife and family from Kennebec river, and took up his residence in the upper settlement of Madawaska, and built a house. In the beginning of October he began to lumber, and with five men took a range for wood through ten lots, on all of which there are settlers, and some of them established fifteen years ago, and have made considerable improvements. Some of the inhabitants forbade him to cut wood upon their lots; he said it did not belong to them, but to the States. He has already about ten or twelve hundred tons of timber, a great part of which I saw on the 19th of February, upon the banks of the river St. John on the north side. He appears to me to be a man who takes much upon him. In August last Captain Flecher came from the States and entered into partnership with him in the lumber trade. John Herford [Harford] came from the States with his wife and family at the same time, took up his residence in the upper settlement of Madawaska, built a house, and is carrying on improvements on his land. Likewise his son, George Herford, with his wife and family In the last of September, Esquire Johnson's son, one of the American surveyors, made a survey upon the north side of the river St. John, beginning at the mouth of the Madawaska river, up to the river St. Francis; he measured the French settlement at the same time."¹

The first governor of Maine, William King,² lost no time in calling the attention of the members of the first Legislature of the state to boundary considerations. In his message opening the

¹*American State Papers*, VI, 849, 850.

²He was the third son of Richard King, of Scarborough, Maine, and was born in that town February 9, 1768. Early devoting himself to large business interests, he made his residence in Bath. During the war of 1812-15, without

session he said he was unable to state the progress that had been made under the fifth article of the British treaty in settling the eastern and northern boundary of the state. As Maine and Massachusetts had so deep an interest in the settlement of these boundaries, it would have been proper, he suggested, if the agent appointed on the part of the United States, had been taken from one of these two states. Under existing circumstances he asked the Legislature to consider whether the interest of the state did not require the adoption of such arrangements as were best calculated to afford the present agent such information in relation to this important subject as the people of Maine had it in their power to give.¹ It is not difficult to find in this suggestion an intimation that Mr. Bradley, the agent of the United States, in conducting his case under the provisions of the treaty of Ghent, was not equal to the demands of the task to which he had been assigned.

Governor King's allusion in his message to the boundary controversy did not escape the notice of Ward Chipman, the British agent, who in a letter June 24, 1820, addressed to Henry Gouldburn,² made this the closing paragraph: "It appears by the message of the governor recently communicated to the Legislature of the new State of Maine (an extract from which I have the honor herewith to transmit) that this State is taking a deeper interest than has been hitherto expressed in this District, in the result of the decision to be made by the commissioners under this article of the treaty, so that every effort may be expected from this quar-

any military experience, he was commissioned a major general of Massachusetts militia, in recognition of his forceful administrative qualities. He was a prominent member of the General Court of Massachusetts. An ardent advocate of the separation of Maine from Massachusetts, he presided over the convention that framed the constitution of the new state. As governor of Maine he received 21,083 votes out of the 22,014 that were cast. In his service as governor, and in all other positions to which he was called, he added honor to the family name, and died in Bath, Maine, June 17, 1852.

¹*Message to the Senate and House of Representatives, June 2, 1820, 14.*

²He was connected with the Foreign Office in London as under secretary for the colonies.



WILLIAM KING.



ter to defeat the just claims on the part of his Majesty upon the present occasion."¹

The British agent rightly apprehended the significance of the words cited from Governor's King's message as indicating a stronger American opposition to British boundary claims than had characterized the management of the case of the United States hitherto. It was not the just, but the unjust, claims of Great Britain, however, that Governor King had in view in his message, and in opposition to which he proposed the adoption of such measures by the Legislature as would adequately safeguard Maine's territorial rights. The members of the Legislature in their consideration of boundary matters saw the importance of bringing the state as soon as possible into very close relations with the national government; and on June 12th, the following resolve² was adopted: "*Resolved*, That the Governor of this State be requested to transmit to the President of the United States a copy of this resolve, accompanied with such representations in relation to this subject as he shall think proper and best calculated to effect the object. And also that he be authorized and requested to make such communications to the Governor of Massachusetts on this subject as he shall deem necessary."³

The governor complied with the request of the Legislature and transmitted to the president a copy of the resolve. In this letter of transmission he said: "When it is considered that Massachusetts and Maine have the right of soil, that Maine has also a State jurisdiction, that the people here have not the honor of an acquaintance either with the commissioner or agent, and have not been advised of any reason for the delay to the present time, it

¹*Ward Chipman MSS.*, library of the Maine Historical Society. The above extract from Governor King's message was also inclosed in a copy of Mr. Chipman's letter to Mr. Gouldburn.

²The reference in the resolve to the governor of Massachusetts was required inasmuch as by the act of separation one-half of all the lands within the District of Maine that belonged to the Commonwealth of Massachusetts still remained in the possession of that state.

³*Resolves of Maine*, 1820, I, 23.

will not be considered a matter of surprise that their extreme solicitude should be such as to render desirable information on a subject so generally interesting."¹ But the desired information, said the governor, was not forthcoming. A letter from the secretary of state in reply stated that while it was expected that a final decision of all points in the boundary controversy would be reached in October, 1820, the expectation had not been realized. Accordingly, he had requested the Maine senators in Congress to confer with the boundary commissioners as they passed through New York on their way to Washington. They endeavored so to do, but not finding the commissioners, they had an interview with Mr. Bradley, the American agent. From his statement and from other sources, said the governor, all reasonable hope of a speedy adjustment of the boundary controversy had vanished. "In the meantime," he added, "it rests with the Legislature to devise such measures as are best calculated to preserve the best interests of the State, and protect it from a system of pillage countenanced by the claims of pretended title and rendered doubly active by the wholesome provisions of our navigation laws."²

As stated at the close of the preceding chapter, the commissioners under the fifth article of the treaty of Ghent, finding an agreement impossible, exchanged a declaration of their disagreement October 4, 1821, and adjourned until the following April. On reassembling then, having prepared their reports, in accordance with the stipulations of the treaty, they presented the same for transmission to the two governments, and the commission came to an end. According to the provisions of the treaty, therefore, the commissioners having failed to render a decision, it now became the duty of the two governments to refer their reports "to some friendly sovereign or state to be then named for the purpose." Mr. Adams, the secretary of state for the United States, with the provision of the treaty in mind, had an interview with Stratford Canning, the British minister in Washington, and suggested that the United States would nominate as such a friendly

¹ Deane, *Report Relating to the New England Boundary*, 1828, 45.

² *Message of Governor King*, January 11, 1821, 4, 5.

sovereign the emperor of Russia. Mr. Canning suggested that the king of the Netherlands would be acceptable to Great Britain. To this suggestion the secretary of state strongly objected, reminding the British minister of the obligations of the king of the Netherlands to Great Britain. Evidently on both sides it was soon discovered that the way of harmony in boundary considerations, certainly for the time, was not to be looked for in that direction. Mr. Adams, too, clearly saw, from an examination of the reports, documents and arguments deposited with the secretary of state by the disagreeing commissioners, that the questions to be submitted to a friendly sovereign involved much more than the interpretation of a few words in an article of a treaty. Indeed, it seemed to him that it would be scarcely within the bounds of respectful decency to ask such a sovereign to pronounce, between two such nations as Great Britain and the United States, upon differences having reference to an extended boundary line, in a region little known except by Indians, and giving rise to questions which their own commissioners, aided by surveyors, geographers, astronomers and agents, after long periods of labor and investigation devoted entirely to that object, had not been able to settle. Out of such considerations a growing conviction seems to have found expression on this side of the sea that the differences between the two countries could best be adjusted by negotiation.¹

But still matters were allowed to drift, the delay naturally being the occasion of increasing irritation in the boundary region, because of encroachments and efforts to resist such encroachments. It having been reported to the governor of Maine that British subjects were trespassing upon valuable timber lands belonging to the state, Governor King in February, 1822, with the advice of the council, appointed Benjamin J. Porter, of Topsham, an agent of the state with reference to such encroachments; and directed him to proceed to the Aroostook region and notify persons trespassing on timber lands west of the due north line from the sources

¹ Manuscript copy of letter of John Quincy Adams to Richard Rush, United States minister in London, dated June 25, 1823. This copy was sent to Governor Parris, and is now in the library of the Maine Historical Society.

of the St. Croix River to the highlands, mentioned in the treaty of 1783, that if they would pay a proper consideration for the timber they had cut and desist from any further depredation on that part of Maine territory, he might make settlement on those terms. If they declined, he was directed to proceed to Houlton plantation and obtain such assistance as in his judgment would be required, in order to take the trespassers and their teams to Houlton and keep them until the governor could be advised concerning the measures adopted. The agent followed his directions, made a settlement with the trespassing British subjects, and received from them the required assurances as to their withdrawal and abandonment of such encroachments.¹

At the same time increasing pressure was brought upon the national government for more aggressive action in securing a settlement of the boundary controversy; and President Madison in his annual message to Congress, December 2, 1823, after stating the difficulty if not the impossibility of finding any friendly sovereign to perform the required service, announced that a proposal had been made by the United States and acceded to by Great Britain, to endeavor to establish the boundary by amicable negotiation.² Yet, though the boundary continued to be a matter of government consideration throughout the following year, the president, in his annual message near the close of 1824, could only say: "Both governments having agreed to establish that boundary by amicable negotiation between them, it is hoped that it may be satisfactorily adjusted in that mode."³

Notwithstanding this expression of hope by the president, however, boundary considerations remained in abeyance. In his annual message to the Legislature in January, 1825, Governor Parris,⁴ who evidently had shared the general disappointment in

¹ *American State Papers*, VI, 843.

² *Messages and Papers of the Presidents*, II, 208.

³ *Ib.*, II, 250.

⁴ Albion Keith Parris was born in Hebron, Maine, January 1, 1778. He received his college training at Dartmouth, graduating in 1806, and was admitted to the Cumberland bar in 1809. He was a member of Congress at



ALBION K. PARRIS.



Maine because of diplomatic delays in boundary matters, made mention of the importance of greater dispatch in bringing the negotiations to completion. From different sources, he said, information was reaching him with reference to depredations of considerable extent on timber lands upon the Aroostook, Madawaska and other streams emptying into the St. John River, and he believed that unless energetic measures were adopted by the Legislature a large portion of the valuable timber of this region would soon be removed.¹

In 1825, Governor Parris directed Mr. James Irish to proceed to the Aroostook region, and seize all timber found in the possession of trespassers on the Aroostook River west of the due north line from the sources of the St. Croix. The agent's report, and other reports that reached the governor, were laid before the Legislative Committee on Public Lands, January 18, 1825. In presenting its report, the committee having called attention to lumber depredations on lands through which the Aroostook and Madawaska rivers flowed, urged the adoption of measures for securing satisfaction for the past and security for the future. These encroachments, it was believed, had the sanction of the Province of New Brunswick. Permits and licenses authorized these encroachments. British settlers, too, allured by liberal encouragement, were establishing themselves upon these valuable lands with the manifest purpose thus to seize and to hold the same as British territory. But to employ a military force for the removal of persons engaged in these encroachments would be unavailing unless it should be retained until the boundary controversy was settled. Besides, the maintenance of such a force

twenty-eight, judge of the United States district court at thirty, and governor of Maine at thirty-three, serving five years by successive elections. In 1827, before the close of his service as governor, he was elected a member of the Senate of the United States; but in June, 1828, he resigned and accepted an appointment as associate justice of the supreme court of Maine. He died in Portland, February 11, 1857, greatly honored. He was the first president of the Maine Historical Society.

¹ *Resolves of Maine*, I, 385, 386.

would require great expenditures and involve the national government; and the committee considered such a course as questionable without the concurrence of Massachusetts and until after the result of the pending negotiations should be known.¹

The committee accordingly submitted resolves, which were adopted January 24th, requesting the governor to correspond with the lieutenant governor of New Brunswick in order to ascertain if the government of that province had authorized any persons to cut timber upon lands west of the boundary line as already determined by the St. Croix commission, or to settle upon such lands. Also the land agent of the state was directed to ascertain the extent of these depredations. The attorney general, in conjunction with such person or persons as should be appointed by the commonwealth of Massachusetts, was instructed to commence action at once against any persons found trespassing upon lands jointly owned by the two states, the expense to be borne by them equally. Also the governor was directed to furnish the governor of Massachusetts with such information concerning these depredations as came into his possession. The same information, and the present action of the Legislature, the governor was instructed to forward to the Maine senators and representatives in Congress.²

Having ascertained that there were a number of American settlers on the undivided public lands on the St. John and Madawaska rivers, some of whom had resided there more than thirty years, the Legislature passed another resolve, February 26, 1825, authorizing the land agent of the state, in conjunction with such an agent appointed for that purpose by the commonwealth of Massachusetts, "to make and execute good and sufficient deeds" conveying to such settlers in actual possession one hundred acres each of land possessed by them, including such improvements as they had made, on payment of five dollars to the state, and the expense of surveying the same.³ Thus authorized, the agents in

¹ *Resolves of Maine*, I, 395, 396.

² *Ib.*, 396, 397.

³ *Ib.*, 438.

the autumn of 1825 made their way to the Madawaska settlement, thence to the mouth of the Mariumpicook, and surveyed and conveyed to John Baker and James Bacon, citizens of Maine, two lots of land of one hundred acres each, on the St. John River, and above the French neutrals. At this time there was no settlement within several miles of their location. The land agents posted notices, announcing their authority and their readiness to give deeds in accordance with the legislative resolves, and several such applications were made.¹ October 10th, James Bacon was authorized by these agents to ascertain the amount of timber that should be cut upon the St. John River in the winter following and also upon the several streams and rivers emptying into the St. John above Grand Falls. In case "permits" were granted by them, they were to settle with the holders according to previous agreement; but from persons who had presumed to cut without their permission, payment was to be required. If this was refused, the timber was to be seized and sold at public auction for the benefit of the two states, first giving thirty days' public notice of the time and place of sale.²

The lieutenant governor of New Brunswick, having complained to the British minister in Washington of the actions of these agents, the complaint reached Governor Parris through Mr. Clay, the secretary of state, who, November 23, 1825, called upon the governor for the facts concerning the transactions mentioned. The correspondence that followed indicated a spirit of forbearance and moderation on the part of both governments, and there are on record no further references to the proceedings of which complaint was made.³

At the opening of the year 1826, the situation, so far as boundary matters were concerned, was exceedingly discouraging. John Quincy Adams, of Massachusetts, was now president of the United States, but in his first annual message to Congress, while

¹ *Deane's Report to the Maine Legislature*, 1828, 48, 49.

² *American State Papers*, VI, 845.

³ *Manuscript Correspondence and Documents, Northeastern Boundary*, State Library, I, 1-17.

he expressed pleasure at "the continuance and increase of the mutual confidence and cordiality by which the adjustment of many points of difference had already been effected"¹ with Great Britain, he made no reference whatever to boundary considerations. It was understood, however, that negotiations between Great Britain and the United States were still in progress; and Governor Parris, in his annual message to the Legislature, urged upon the members of the Legislature the importance of securing information of all kinds bearing upon the subject. "More than ten years," he said, "have elapsed since the ratification of the treaty which provides for ascertaining and determining this boundary," yet during all this time those most interested in the success of the British claim had not been inactive "in acquiring and furnishing their government with a knowledge of every fact important for its support."² Certainly, activity on Maine's part, and in the same direction, was most desirable.

This part of the governor's message was referred to the members of the joint committee on state lands. In their report,³ while strongly deprecating any reference of boundary matters to some friendly sovereign as a procedure that should be avoided if possible, the committee found little reason to expect from the British government any just recognition of the rights of the people of Maine, and discovered no evidence of an early settlement of a wearisome contention. But notwithstanding this expression of discouragement, and in accordance with the governor's call for renewed activity, they urged the collection of maps, surveys, documents and publications of all kinds bearing upon the questions in dispute between the two countries and suggested an appropriation of five hundred dollars to carry into effect a resolve authorizing such action.⁴

This effort of the state to obtain information from the national

¹ December 6, 1825. *Messages and Papers of the Presidents*, II, 300.

² *Resolves of Maine*, I, 472, 473.

³ It was prepared by Reuel Williams of Augusta.

⁴ *Resolves of Maine*, I, 480-482.

government seems to have been a failure. A very vague allusion to the matter is made by Governor Enoch Lincoln¹ in his first annual message, in which he referred to the effort of his predecessor to obtain the boundary documents contemplated by a resolve of a former Legislature. In a mention of the dilatory processes of a negotiation referring to the boundary matter, the governor expressed the hope that a regard for the interests of the state might "urge to a conclusion in a reasonable term."²

This part of the governor's message, and also a letter from the governor containing a letter from the British minister in Washington to the secretary of state for the United States, were referred to a joint select committee, which made a report to the Legislature, February 16, 1827. In this report, as in the governor's message, there was an indication of unexpressed uneasiness on the part of the people of Maine, arising from a fear that the general government was not taking that deep interest in the boundary controversy which its importance from territorial considerations seemed to demand. While expressing the belief that the United States would not, under any circumstances, allow the cession of any part of Maine soil, the committee add: "We can anticipate only one class of events which would vest a right in the general government to give up any such territory; and those events are such only which, from the application of external force, would impair the national compact and destroy the present Union. In any other case, we deny the right of the government of the

¹ Enoch Lincoln was born in Worcester, Massachusetts, December 28, 1788. He was admitted to the bar in 1811, and entered upon the duties of his profession in Salem; but in 1812 he removed to Fryeburg, Maine. In 1817, he took up his residence in Paris, and soon after was elected a member of Congress, serving eight years. He was then elected governor of Maine. His brother, Levi Lincoln, was governor of Massachusetts. Both were descendants of Thomas Elbridge, who having inherited the Pemaquid patent came to this country from Bristol, England, about 1644, and, after a short residence at Pemaquid, removed to Marblehead, Massachusetts, where he married. He died on the island of Jamaica, West Indies, in 1682, aged 63.

² *Resolves of Maine*, I, 540, 541.



United States to yield any portion of our territory to any other independent sovereignty, unless by the consent of the State."¹

Following the presentation of this report, action was taken by the Legislature requesting the governor to adopt such measures as he deemed expedient, both in acquiring information with reference to boundary matters and in securing a speedy settlement of the dispute. To carry this resolve into effect, Governor Lincoln, March 20, 1827, addressed a letter to Henry Clay, then the secretary of state in Washington. It was a plea for an open or confidential communication of the information requested by his predecessor, based upon the growing importance to the people of Maine of all matters connected with the boundary controversy. The report and resolve, which he inclosed, vindicated, he said, the present disposition and purposes of the state with reference to these matters; and he called attention to the great benefit that would be derived by an anxious people from an early determination of a harrassing claim.²

Evidently the letter was intended to indicate a firmer attitude on the part of the state with reference to boundary concerns. Hitherto these concerns had been left largely under the direction of the general government, and there was dissatisfaction in Maine with the results which thus far had been reached. It was thought that the interests of the state had not been sufficiently safeguarded. Her representatives had denied the right of the national government to cede any portion of the territory of Maine without Maine's consent, but there was a lack of evidence that the denial had made the desired impression in Washington. In brief, the governor believed the time had come for a more energetic and determined procedure in whatever negotiations were in progress; and he lost no time in letting it be known that Maine was aware of her rights in the boundary controversy and expected to be considered in matters pertaining to it.

In his reply to Governor Lincoln's letter, Mr. Clay, March 27,

¹*Resolves of Maine*, I, 576.

²*Appendix No. 14 to Deane's Report to the Maine Legislature*, 1828, 25.



ENOCH LINCOLN.

1827, after explaining his course in withholding information, offered to furnish copies of all surveys, documents, etc., with the exception of the reports and arguments of the commissioners and agents. He also alluded to the remarks of the committee of the legislature with reference to the acts of which the British government complained as encroachments upon the rights of New Brunswick; and while he was of the opinion that the president might be disposed to agree with the committee in the views they expressed, he called attention to the fact that an opposite opinion was entertained by Great Britain, and he reminded the governor that if each party, so long as the controversy remained unsettled, should assert title to the same territory and should proceed to take possession of what it claimed, an immediate collision was inevitable. In accordance with assurances given through the British minister in Washington, he said, the government of Great Britain, at the request of the United States, had abstained from any new acts that might be viewed as an exercise of the rights of sovereignty over the disputed territory. Under these circumstances, the president deemed it advisable that there should be on Maine's part like forbearance, believing that it would have a favorable influence in securing the amicable adjustment of existing differences; adding, "It is worthy also of consideration, that, although Maine is most, she is not the only state interested in the settlement of this question."¹

To this letter, evidently written under the pressure of aroused and disturbed reflections, Governor Lincoln made a long and very frank reply, April 18, 1827. In it he said: "All that forbearance, which the occasion requires will, as I may safely assure you, be exhibited by this State. While her extensive and valuable tracts of wild land, which might otherwise soon be improved, remain unsettled;—while her progress in wealth and power is checked in a most disastrous manner, at the period most favorable to giving an impulse to her prosperity;—while many important

¹*Deane's Report*, Appendix, 1828, 26, 27.

resources are left dormant during the pendency of the dispute as to her property and jurisdiction;—while a frontier, which might soon be made strong, remains unfortified by the freemen anxious to occupy it, we will, I doubt not, forbear on the request of the general government, until the imperious call of duty shall summon her to occupy her inheritance. Seeking to promote by all suitable concessions the amicable adjustment you refer to, she will only withdraw her deference and submission, when a claim unjust in itself may seem to expose a portion of her territory to incorporation with a province. With the spirit of forbearance, she has sought information only as to an interest vital to herself as well as important to the country, without any purpose calculated to excite distrust, with only such patriotic views as have rendered the refusal to comply with her request a subject of that species of surprise, which a friend, predetermined to take no offense, feels when he is not treated with a corresponding confidence.”¹

The governor's letter was an urgent plea for straightforward dealing and mutual confidence, prompted by the conviction that Maine hitherto had not been sufficiently informed with reference to the purposes of the general government in matters pertaining to the boundary. Also, unquestionably, there existed in the mind of the governor, and of men throughout the state, a fear that any protest on the part of Maine, important because grounded in a better knowledge of facts and conditions, would be received too late for consideration. In renewing the request of the state for information, the governor accordingly suggested an acceptable modification of that request, in accordance with which any communication from the general government, made in return for such information, would be received by the governor; “if so required, subject to a restriction on publicity beyond a communication to the Legislature in the usual terms of confidential communications. If the President will not consent to this, we must yield with the deference we owe to the station he holds, to the claims he has on our affections and confidence, to the information he possesses, and

¹ *American State Papers*, VI, 924-926.

the prudence he displays to any extent within which the absolute and indefeasible rights of Maine may not be compromised."¹

In his reply, May 7, 1827, Mr. Clay defended the attitude of the administration in withholding from the government of Maine the information called for by the Legislature, insisting that compliance with the request might have an injurious effect upon negotiations with Great Britain still pending. He expressed the belief, however, also intimated in his letter of March 27th, that these negotiations would soon be brought to some conclusion, perhaps in less time than would be required in copying and transmitting to the governor the information for which he had called. He offered, however, to furnish a list of papers filed by the boundary commissioners, copies of which would be furnished for the use of the State of Maine with the exceptions already mentioned.²

But Governor Lincoln remained unsatisfied with Mr. Clay's statement of the attitude of the general government toward the government of the State of Maine. This dissatisfaction was increased by the failure of the London negotiations undertaken by Mr. Gallatin,³ and the information that the boundary case would now go to some European sovereign for arbitration. The governor accordingly deemed it his duty, because of Maine's interest in the case, to appeal directly to the president.

Having referred to the large tract of territory belonging to the State of Maine claimed by the British government, the governor said he had been informed by the secretary of state that the disputed boundary claims were now about to be submitted to some foreign sovereign for arbitration. The prospect of committing "the destinies of Maine to an irresponsible arbiter, to be found in a distant land and necessarily unqualified to act in the case," he added was not a pleasing one. The proposed arbitration he

¹ *American State Papers*, VI, 924-926.

² *Ib.*, 926, 927.

³ Mr. Gallatin was sent to England in 1826 as minister of the United States charged with the duty of arranging various questions of difference between the two governments.

believed would jeopardize the rights of Maine without her consent and against her will; and if called upon and forced to make the required sacrifice, Maine, he held, would be compelled "to deliberate on an alternative that would test the strictness of her principles and the firmness of her temper."¹

Referring to the union of the states under the federal constitution, Governor Lincoln also held that while Massachusetts surrendered to the general government a portion of her powers, she yielded no right to dispose of her territory, or to take any part from her jurisdiction. Maine, as the successor of Massachusetts in exercising governmental control, could not recognize "any procedure by the United States and Great Britain for the severance of her territory and the abrogation of her authority, without a sensibility too serious to be passive. She holds that her domain is not the subject of partition." The power of subjecting territorial rights to arbitration, giving to the arbiter the power to determine and establish territorial limits, is equivalent to the power of ceding territory; and the interposition of the general government in such cases he held to be without constitutional authority. "The cession would be nugatory, and if, for a time, Maine should be compelled to submit to it, the abeyance produced by power will not preclude the right of resumption which justice may at some period award."²

In this letter, Maine at length had found a voice, and it was the voice of one who was determined to be heard. President Adams, however, had no words of resentment because of the lack of the usual official forms of expression in such communications, and especially because of the strenuous declarations which Gov-

¹ Governor Washburn, in his paper on The Northeastern Boundary (*Maine Historical Society Papers*, First Series, VIII, 36), referred to these "grave, strong words of Governor Lincoln" as words that "stirred the blood of every true son of Maine to a boiling heat, and reaching the department of State, brought the Federal Administration to a halt in what had been apprehended were its purposes."

² *Journal of the Executive Council*, 1797, 67, 68.

ernor Lincoln had placed on record in letting it be known that boundary affairs had not been conducted as Maine thought was fitting considering the importance of her interests. Replying through the secretary of state, the president promised that the governor's letter should receive careful, respectful attention. It would afford him great satisfaction, he added, if a resort to arbitration for the settlement of the boundary controversy could be avoided by obtaining from Great Britain an explicit acknowledgment of the territorial claims of Maine in their whole extent; but the prospect was not encouraging.¹

Although in the earlier part of the year, the government of the United States received assurances that the British government would abstain from the adoption of any new measures that could be regarded as an exercise of the rights of sovereignty in the disputed territory, the assurances were disregarded; and Governor Lincoln, September 3, 1827, called the attention of Mr. Clay to conditions in the boundary country. "Along the St. John river," he said, "following it up westwardly from the junction of the Madawaska, is a very flourishing settlement containing a considerable number of peaceably disposed and industrious inhabitants. Among these is a proportion of American emigrants, some of whom hold their land under deeds from Massachusetts and Maine, and the others, or nearly all of them, are anxious to obtain titles in the same way. The latter at present occupy as tenants at sufferance, and neither recognize the lands as being crown lands, nor do they voluntarily submit to British authority. These persons the government of New Brunswick treats in all respects as aliens, denies their right to hold real estate, assesses upon them the alien tax, and refuses to permit to them the transmission of their produce as American. I forbear to speak of many acts of violence and petty vexation of which they also complain. The other inhabitants are uniformly treated as British subjects, and new acts of jurisdiction even to requirement of military duty are

¹*American State Papers*, VI, 929, 930.

as frequently exercised as the ordinary operations of a municipal control require."¹

This condition of things upon the border Governor Lincoln made the ground of a new appeal for the protection of state interests. To allow the Maine lands in the boundary region to remain uncultivated, and to postpone public improvements because of a state necessity, said the governor, was a sacrifice that was capable of being endured if required; but it was not pleasing to see citizens of the United States under the authority of those who owe us allegiance. The governor also again gave expression to his disappointment at the announcement from Washington that it had been finally decided to refer the boundary controversy to the arbitration of a foreign sovereign, and asserted his belief that the people of Maine would never consent to an award that was unfavorable to Maine interests.² September 14th, in acknowledging the receipt of the governor's letter, Mr. Clay stated that he had transmitted to the British minister in Washington the governor's statements with reference to New Brunswick encroachments, with the request that the necessary orders should be given for the enforcement of the arrangement that had been made to restrain both parties from acts of jurisdiction in the disputed territory until the controversy was settled.

How well Governor Lincoln understood conditions along the northeastern frontier of the country is made clear in his correspondence with reference to the arrest of John Baker by New Brunswick officials. In 1825, the land agents of Massachusetts and Maine under the provisions of resolves of the two Legislatures, dated February 26th and June 11th, granted one hundred acres of land³ to John Baker, describing him as an inhabitant of a plantation called and known by the name of "The Madawaska

¹ *Deane's Report*, Appendix No. 25, 46.

² *Ib.*, 48.

³ The land was described as beginning at Mariumpcook stream or point on the St. John River. It was a mill seat, where there had been erected a sawmill and a gristmill.

settlement in the County of Penobscot."¹ It was the same land which was formerly in possession of his brother, Nathan Baker, then deceased, whose widow John Baker had married. Here, regarding themselves as citizens of the United States, John Baker and some other settlers in the vicinity erected a liberty pole, July 4, 1827, and raised an American flag. It was such a celebration of the day as they had known in the Maine towns from which they came. While these proceedings were in progress, however, a New Brunswick official appeared and ordered John Baker to lower the flag. This Baker refused to do. On the following day,² a paper prepared by Baker and James Bacon, was made the occasion of a public declaration of their rights as American citizens on American soil, the signers agreeing to adjust all disputes among themselves by referees, and to support each other in asserting Maine's territorial rights. It was a brief compact providing for security in civil concerns in the absence of state authority. But again the New Brunswick official appeared, and demanded the surrender of the manuscript agreement. This demand, also, was refused.

Because of this clashing with New Brunswick authority, Baker and Bacon not long after made their way to Portland and laid their grievances before the governor, having especial reference to New Brunswick encroachments and their own recognition as citizens of Maine, entitled to state protection.³ They received from the governor assurances of state support, but they were urged to observe the utmost caution in all their relations to opposing parties while the boundary controversy remained unsettled. After their return, very early in the morning of September 25th,

¹At the same time one hundred acres of land below Baker's grant, and between the point and the new French settlement, was granted to James Bacon, also a citizen of the United States. *Daveis' Report*, as agent of the State of Maine, January 31, 1828, 19.

²*American State Papers*, VI, 842.

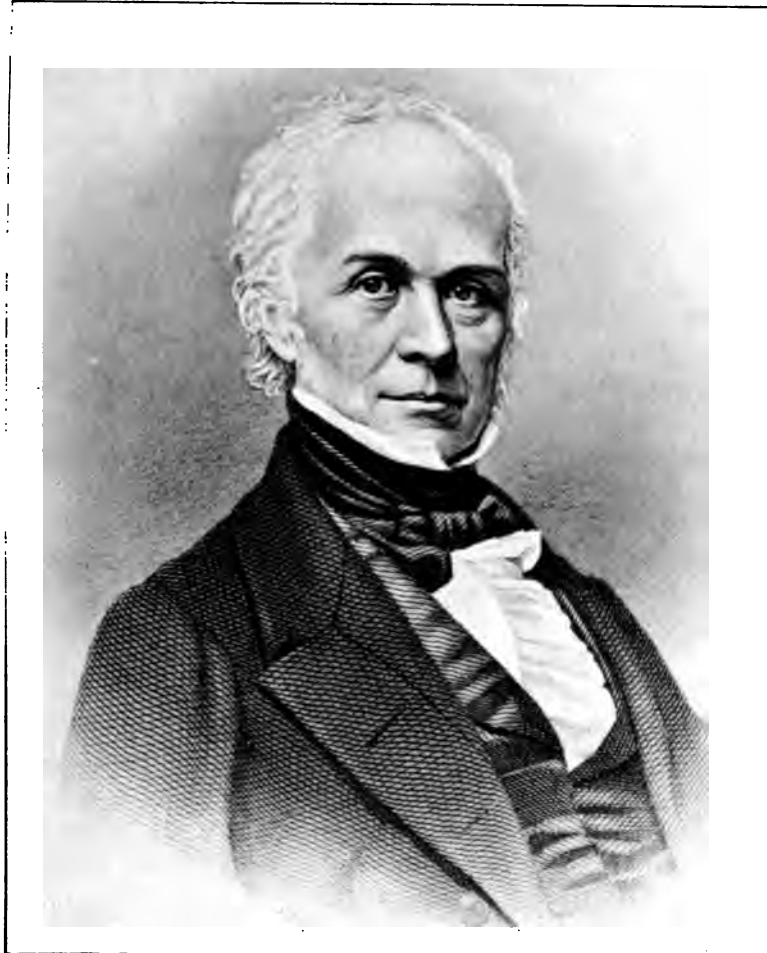
³Their sworn statement is in *Manuscript Correspondence and Documents*, State Library, 1, 65-70.

John Baker was arrested by an armed force from Fredericton, New Brunswick, to which place he was taken and committed to jail. A nephew of Mr. Baker was despatched at once to the nearest post office on the Kennebec River, conveying a statement to the state authorities announcing Mr. Baker's arrest. October 22, 1827, Governor Lincoln having received this statement addressed a letter to Sir Howard Douglas, lieutenant governor of New Brunswick, requesting information concerning the arrest and imprisonment of Mr. Baker. "The attempt to extend the jurisdiction of New Brunswick over the disputed territory," he said, "will compel counteraction from Maine;" and he reiterated the statement in the added words, "The arrest of our citizens or what we believe to be a part of our state will demand its utmost energies for resistance."¹

The answer to this communication came somewhat tardily, having been written November 15, 1827, and gave no evidence of an effort on the part of the lieutenant governor to improve the existing strained relations between the two governments. It opened with a lesson on manners, occasioned by the fact that the governor of Maine had presumed to open correspondence with the writer concerning a matter under consideration between the British government and the government of the United States. This was followed by a refusal to furnish the information requested on the ground that such action would be inconsistent either with his sense of duty or with his instructions. Declining, therefore, any further correspondence with the governor of Maine, the lieutenant governor closed his reply with the expression of a hope that his future conduct in these relations would be such as to evince a just solicitude for the repression and punishment of any act in the disputed territory that might lead to the interruption of a good understanding between the two countries, and to keep the question in a state propitious for a speedy and amicable adjustment.²

¹ *Deane's Report*, Appendix No. 27, 49.

² *Ib.*, Appendix No. 29, 54, 55.



CHARLES S. DAVEIS.

Failing to obtain from the lieutenant governor of New Brunswick the information he sought, Governor Lincoln, November 5th, appointed Mr. Charles S. Daveis¹ an agent of the state, and directed him to proceed to Fredericton, and obtain such information concerning Mr. Baker's arrest and imprisonment as he had requested in his letter to Lieutenant Governor Douglas. Writing to the latter again, soliciting now a friendly reception for Mr. Daveis, and permission for him to pass through the territory he might wish to visit for the purpose of ascertaining facts relative to complaints of violence and injustice committed on citizens of Maine, he closed his letter with these words: "Mr. Daveis' authority does not specially designate his object; but you are requested to consider him as fully empowered to demand the release of John Baker, a citizen of Maine, said to be confined in the jail at Fredericton, and that the persons, who arrested him and conveyed him there, may be delivered up to be tried by the laws of this state and dealt with as justice may require."²

This action was followed four days later with a proclamation by the governor as follows: "Whereas it has been made known to this State that one of its citizens has been conveyed from it by a foreign power to a jail in the Province of New Brunswick; and that many trespasses have been committed by inhabitants of the same province on the sovereignty of Maine and the rights of those she is bound to protect—Be it also known that, relying on the government and people of the Union, the proper exertion will be applied to obtain reparation and security—Those, therefore, suffering wrong, or threatened with it, and those interested by sympathy on account of the violation of our territory and immunities, are exhorted to forbearance and peace, so that the preparations for preventing the removal of our landmarks, and guarding the

¹ Mr. Daveis was a prominent lawyer in Portland. Judge Symonds once referred to him as a man, "who mingled taste, and refinement, and all the graces of personal and social elegance with learning and genius in the practice of the legal profession more than any other man who ever lived in Maine."

² *Deane's Report*, Appendix No. 29, 50.

sacred and inestimable rights of American citizens may not be embarrassed by any unauthorized acts." ¹

About this time the promised papers, maps, etc., referring to boundary affairs were received from the state department at Washington. In acknowledging their receipt, and also a communication from Mr. Clay dated November 16th, Governor Lincoln expressed disappointment in learning by this letter that his objections to the submission of the territorial and jurisdictional rights of Maine to a foreign umpire, without consulting or advising her as to the conditions, had not been deemed available. If any injury shall result to her, he added, "the appeal will be made to the people of the country and to posterity." The depth of the governor's disappointment is revealed by the following words: "At last, we learn that our strength, security and wealth are to be subjected to the mercy of a foreign individual who, it has been said by your minister, 'rarely decides upon strict principles of law,' and 'has always a bias to try, if possible, to split the difference.' I cannot but yield to the impulse of saying most respectfully that Maine has not been treated as she has endeavored to deserve." In closing his letter the governor referred to the arrest of John Baker, mentioning the fact that his arrest was made on land conveyed to him in 1825 by Massachusetts and Maine—a conveyance that was virtually "a certificate of citizenship and a pledge of protection;" and he called upon the president and the secretary of state to contend as earnestly against the arrest of yeomen on the frontier as against the imprisonment of sailors upon the high seas." ²

In his annual message to the Legislature, January 3, 1828, the governor devoted considerable space to matters relating to boundary considerations. Of course there was a reference to the arrest of John Baker. The state, with exemplary moderation, said Mr. Lincoln, had for years refrained from the exercise of many of its rights out of an anxious desire to accede to the wishes of the

¹*Deane's Report*, Appendix No. 32.

²*Ib.*, Appendix No. 31.

general government in its endeavor to avoid troublesome foreign complications. The state would shrink most dreadfully from the shame of allowing its citizens to be incarcerated in foreign jails; and the governor expressed a desire to learn from the Legislature what measure would be considered proper if such acts as that of the arrest and imprisonment of Mr. Baker should be repeated.

The message gave no uncertain sound with reference to the gravity of the situation in Maine because of Mr. Baker's arrest. Referring to the possibility of another war with Great Britain occasioned by these boundary clashings, the governor remarked: "If that melancholy result of human frailty shall be produced, the situation of Maine will require great resolution and activity. The concentration of the British forces with the view of dividing the Union, by an occupation of New York, will not be attempted again; but the seaboard, and the interior frontier of Maine, will be the one a line of maritime invasion and the other of excursions and incursions according to the emergencies relating to our defence. The effort will probably be to cut off this State, or at least for this we ought to be prepared, so as not to admit any repetition here of such scenes as occurred during the last war."¹

In his message the governor again called attention to the undefined and perhaps undefinable line of rights between State's and United States' authority. The president, he said, had been considered as disposed to submit the question of the boundary of Maine to the umpirage of a foreign sovereign, without consulting the wishes of the people of Maine. This action the governor believed admitted the possibility of an unjust and disastrous decision. He accordingly believed it due to the state "to advance the doctrine that the submission of its boundary to an umpire, unknown to herself, and upon terms not confided to her consideration, will leave her at liberty to act upon the result as, to the country and herself, may be dictated by the most just and patriotic inclinations."²

¹*Resolves of Maine*, I, 622-626.

²*Ib.*, 623-624.

But the governor desired especially to learn from the Legislature what measures would be considered proper, in case such acts as the arrest and imprisonment of Mr. Baker should be repeated during the proposed arbitration proceedings. Reference was made to what had been done by way of correspondence with the lieutenant governor of New Brunswick and by the appointment of Mr. Daveis to visit New Brunswick for the purpose of obtaining information. In his own mind there was no doubt of the intention of the government of New Brunswick to extend and confirm its jurisdiction over the whole disputed territory. Subject to the direction of the Legislature, he purposed "to offer some difficulties against such a course; nor could it be doubted that the United States government and that of Great Britain would see, on being furnished with the facts, that the government of New Brunswick had advanced beyond the line of tenable ground, while it seemed not to have listened to those recommendations to mutual forbearance which had rung out so loud that invasions of Maine territory had failed to attract that attention which otherwise they would have received."

The governor's message was at once referred to a joint committee of the Legislature. On January 26, 1828, the committee, through John G. Deane, presented an extended report reviewing the history of the northeastern boundaries, and of the controversies that had followed the description of the boundary in the treaty of 1783. Referring to that part of the governor's message in which the territorial rights of the State of Maine were asserted, the report of the committee sustained the governor's position, holding that the Union was composed of independent sovereignties, that it was never intended to give to the federal government any power by which rights of sovereignty and jurisdiction might be abridged. It had never been pretended that Congress had the power of taking from one state and giving to another, or of incorporating new states within the limits of old ones; nor had it ever claimed to exercise such power. The most it had ever done, or had a constitutional right to do, had been to give its consent to the compact

made between the parties immediately interested, and to admit the new state into the Union. Congress, therefore, had no more constitutional right to take territory from Maine and cede it to New Brunswick than it had to take from Virginia a part of her territory and cede it to North Carolina. In fact, Congress had not attempted to exercise any such power. The treaty of Ghent limits the power of the boundary commission to the surveying and marking of the lines and erecting its monuments according to the treaty of 1783. If, however, the United States government should so far yield in matters pertaining to the boundary controversy that the lines of the State of Maine should be materially changed, she would be as much dispossessed of her territory and sovereignty as she would have been by a direct exercise of the power of cession. The one mode, equally with the other, involved an assumption of power that was never delegated. This part of the report closed with the following words:

“While it is the duty, as well as the interest of individuals, as well as States, to yield a peaceable and quiet obedience to every exercise of constitutional power on the part of the government of the United States, it is equally their duty and their interest to resist all encroachments on the rights which they have reserved. If a part of the State of Maine should be surrendered by the government of the United States, either by a direct or indirect exercise of the power of cession, it will then be a duty which she owes to herself to consider whether she has, by such an invasion of her rights, lost her right of sovereignty and jurisdiction. Such an exercise of power can have no obligatory force, and unless Maine quietly and peaceably submits, it will be the duty of the States, a duty imposed by the federal government, to afford her aid and protection, and to aid her in regaining her rights.”¹

Legislative action followed by which the governor, in case of new aggressions upon the territory of Maine by the government of New Brunswick, and provided seasonable protection should not be given to the state by the United States, was requested to use

¹*Resolves of Maine*, I, 695, 696.

all proper and constitutional means to protect and defend its citizens in the disputed territory in the enjoyment of their rights. It was also resolved that in the opinion of the Legislature the president of the United States ought, without delay, to demand of the British government the immediate release of John Baker. Meanwhile, the governor was authorized to extend to Mr. Baker's family such relief as was deemed necessary. From this position, now firmly taken by the governor and the Legislature of Maine, there was no retreat in the added years of the boundary controversy; and no action was taken by the government of the United States that involved such a cession without first obtaining the consent of the State of Maine.

Mr. Daveis' report to Governor Lincoln, giving the results of his visit to New Brunswick as the agent of Maine,¹ was presented to the Legislature, January 31, 1828. It covered thirty-five printed pages, and was a clear and forceful relation of facts concerning recent aggressions upon the territorial rights of the State of Maine and upon the individual rights of citizens of the United States living in the boundary country. The inhabitants of the Arrostook valley, he said, were living upon land, of which grants and surveys were commenced before the war of 1812, under authority of Massachusetts and without remonstrance from New Brunswick. Mr. Daveis also gave an account of conditions among the settlers upon the St. John River within the boundary line, as it crossed the river on a due north line from the source of the St. Croix. The provincial government had never made any grant above the river Madawaska. It was here, above the French settlements, that John Baker obtained a grant of land from Massachusetts and Maine, the first American settlement having been made in 1817, and it was from holdings here that Baker was taken by New Brunswick officials. No resistance was made by Mr. Baker. It did not appear that any preliminary examination was held at that time, but the prisoner was taken to Fredericton and committed to jail. In closing his report, Mr. Daveis said: "The

¹ *Massachusetts Historical Society State Library*, I. 241-170.

facts are shortly these: citizens of Maine and others settled on lands surveyed and granted by its authority, living within its ancient and long established limits, are subjected to the operation of foreign laws. These are applied to them in the ordinary course of civil process, in taking away their property and also their persons. American citizens in this State are proceeded against as aliens, for sedition and other offences and misdemeanors against the crown of Great Britain; and one of them, a grantee of Massachusetts and Maine, seized on the land granted, remains in prison on charges of that description. A portion of this State, of considerable magnitude, is thus actually incorporated into an adjoining province; and his excellency, the Lieutenant Governor, a person of great virtue, is unable from his situation, to afford the explanations which these acts obviously require, except to those under whose orders he is placed, or with whom he is obliged to correspond."¹

In his visit to New Brunswick and the disputed territory, Mr. Daveis was accompanied by Mr. S. B. Barrell, whom President Adams, informed of disturbances on the eastern frontier, had appointed as early as November 19, 1827, to obtain further information concerning them. He was particularly directed to inquire into the causes of the arrest of John Baker; and, if it was deemed necessary, he was to proceed to his place of confinement, it being alleged that he had been committed to a loathsome and unhealthy jail.² In his report to the secretary of state, February 11, 1828, with reference to this special request, Mr. Barrell said that while at Fredericton he had repeated interviews with Mr. Baker. The apartment of the prison in which Mr. Baker was confined precluded the possibility of rendering its tenants comfortable. In the same apartment with Mr. Baker there was a man who was imprisoned for debt. In fact, as Mr. Barrell was informed,

¹*Daveis' Report*, 34, 35. A large number of documents, referring to John Baker's case, collected by Mr. Daveis when in New Brunswick, will be found in Vol. I of *Correspondence and Documents* in the State Library, 171-429.

²*American State Papers*, VI, 838, 839.

the prison had been recently presented by the grand jury of the county as a public nuisance.¹

From Fredericton, Mr. Barrell proceeded to the Madawaska settlement, and, having had free communication with the American settlers there, he made quite a full report as to the origin of these settlements, and the causes of recent disturbances. Concerning the document drawn up by the Americans the day after the Fourth of July celebration, the report says: "This document, as the undersigned was informed by several of the settlers, was in the form of by-laws; and the purport of it was, that the signers, in consequence of their great distance from their own government, thinking it expedient to form themselves into a society and have laws of their own, agreed that they would resist any further attempt to enforce the laws of Great Britain among them, and would make laws for themselves. John Baker, James Bacon and Daniel Savage were constituted a tribunal for the enforcement of law among them, with power to seize and sell property in satisfaction of debts contracted among the settlers: One of the settlers was appointed to the office of constable. These by-laws were to be in force for one year, unless sooner assembled by the American government. This document, they stated, was signed by most of the American settlers, and was offered for signature, and the contents explained, to several of the French settlers, one of whom was induced to put his name to it. It was destroyed about a month afterwards."² To the settlers at Madawaska Mr. Barrell recommended forbearance and moderation in their future proceedings during the progress of boundary negotiations, assuring them that if they remained inoffensive and peaceable they could rely upon the protection of the federal government.

Meanwhile, Mr. Clay was still in correspondence with the British minister in Washington concerning collisions of authority to which the United States and Great Britain were exposed by reason of this long delay with reference to the adjustment of the

¹*American State Papers*, VI, 840.

²*Ib.*, VI, 842.

boundary controversy. The visit of Mr. Barrell had disclosed some transactions which the president had noticed with regret. The settlement on the Madawaska was an unauthorized intrusion on the property of the State of Massachusetts, to which the territory belonged before the treaty of 1783. The French settlement there could not affect or impair the right of Massachusetts, or give any strength to the pretensions of the British government. Even if in consequence of that settlement a possession *de facto* was obtained by New Brunswick, it was a possession limited by actual occupancy, and did not extend to the uninhabited portions of the adjoining waste. The settlement of John Baker appeared to have been made upon contiguous waste lands outside of the Madawaska settlement, and whatever jurisdiction New Brunswick might claim in virtue of the Madawaska settlement could not be extended to Baker and his American neighbors. Even if he had been guilty of any irregularity of conduct, therefore, he was not amenable to the provincial government, but to his own. Consequently his arrest on the disputed territory, and his imprisonment at Fredericton, at a considerable distance from his family, and under loathsome conditions, could not be justified. It was a proceeding that seemed to have been adopted without regard to the rights of the United States, and was incompatible with that moderation and forbearance which it was understood both governments would exercise until the question of right between them should be finally settled. "I am charged, therefore, by the President," wrote Mr. Clay, February 20, 1828, "to demand the immediate liberation of John Baker, and a full indemnity for the injuries which he has suffered in the arrest and detention of his person."¹

In his reply Mr. Vaughan, the British minister, admitted that Baker's residence was not within the limits of the Madawaska settlement, but insisted that it was within the jurisdiction of New Brunswick, and that Baker knew it, as he applied in 1822 for the

¹*American State Papers*, VI, 1016.

bounty given by New Brunswick for corn grown in newly cultivated ground. He also still insisted that all persons who take up their residence in the disputed territory were within British jurisdiction until the establishment of the boundary line.¹

Mr. Clay sharply joined issue with the statement of the British minister that the sovereignty and jurisdiction of the disputed territory rested with Great Britain, while the controversy was still in progress. Mr. Vaughan's argument, he said, assumed that some other act than the treaty of 1783 was necessary for setting apart the territories of the United States from those of Great Britain, an argument that would prove that the United States was not now lawfully in possession of any portion of the territory acquired by the war for independence, the treaty of 1783 being the only act of separation by virtue of which the territory was now held. In fact, to maintain his position, he said, Mr. Vaughan must make out first that the terms of the treaty do exclude altogether the disputed territory, or that, if they include it, actual possession was with Great Britain in 1783. Neither proposition could be established. As to the alleged irregularity of John Baker's conduct as forming a justification for his arrest and the subsequent proceedings in the courts of New Brunswick, the acts complained of were performed by him under a belief that he was within the rightful limits of the State of Maine, and so were very different from what they would have been if they had been committed on the uncontested territory of Great Britain. Mr. Clay closed his letter with the statement that he was again charged by the president "to protest against the exercise of all and every act of exclusive jurisdiction on the part of the government of the Province of New Brunswick," and to announce that that government would be held "responsible for all the consequences" to which any of those acts of jurisdiction should lead.² In his reply March 25th, the British minister adhered to the position he had already assumed, and June 4th he informed Mr. Clay that Baker

¹ *American State Papers*, VI, 1017.

² *Document No. 126*, 25th Congress, Second Session, 300-304.

had been found guilty and sentenced. Meanwhile, however, Mr. Clay had carried the matter to Mr. William B. Lawrence, the United States charge d' affairs in London, the president having instructed the secretary of state to address an official note to the British government, calling upon it to interpose its authority with the government of New Brunswick, and enforce a compliance with the demands already made upon that province, insisting that the United States could not consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity, adding that any such interposition alone would supercede those precautionary measures which the United States would otherwise be constrained to adopt.¹

Mr. Lawrence, addressing the Earl of Dudley, May 5, 1828, presented to the British principal secretary of state for foreign affairs the case of John Baker, and made a direct call upon the government of Great Britain for his liberation, with a full indemnity for the wrongs he had suffered by his arrest and imprisonment. He also stated that he was instructed to require that the government of New Brunswick should cease to exercise acts of exclusive jurisdiction within the disputed territory. The letter throughout was a strong presentation of the case of the United States against the New Brunswick claim of exclusive authority within the boundary territory pending the settlement of the line.²

June 26, 1828, in a letter to Mr. Clay, Mr. Lawrence detailed at length his interview with Lord Aberdeen concerning matters considered in his letter of May 5th. Lord Aberdeen's views, in reply to the American case as presented in the president's charge, were more fully set forth in his letter to Mr. Lawrence, dated August 14, 1828, in which he fully sustained the action of the government of New Brunswick with reference to John Baker, asserting that full and substantial justice had been done to him; and while admitting that the right of eventual sovereignty over the disputed territory was a question remaining in doubt, he held,

¹ *Document No. 126*, 25th Congress, Second Session, 321, 322.

² *Ib.*, 322-327.

as an acknowledged rule of law, that where such a doubt exists the party that once clearly had that right, and had retained actual possession, should continue to hold it until the question at issue was decided. The recent attempts of the State of Maine to introduce its authority along the frontier, he attributed to apprehensions that forbearance on the part of the United States to this extent would be construed into an admission of the right of Great Britain to the possession of the territory she claimed. Such apprehension he declared to be without foundation.¹

In a forceful reply to Lord Aberdeen's letter, Mr. Lawrence, August 22nd, while forbearing to consider further the Baker case in the absence of any knowledge of the president's views with reference to the proceedings connected with the trial of Baker, took occasion to add that if the view which the United States held of its territorial rights was correct, all those proceedings must be admitted to have been before a tribunal wholly without jurisdiction. He then combatted vigorously Lord Aberdeen's assertion of Great Britain's claim as to exclusive jurisdiction in the disputed territory, showing that there was no ground for the application of the rule of law, cited by the British secretary of state.²

John Baker next comes before us in a note addressed to Governor Lincoln, October 13, 1828, by Mr. Charles S. Daveis. Baker was still in prison, and through Mr. Daveis applied for the relief provided by the legislature on behalf of his family. The painful situation in which he had been placed for a year was mentioned. Baker was not asking anything for himself. "Although it becomes his duty to wait his deliverance," said Mr. Daveis, "he deems his liberty of too great value to be sold for gain." But his family was in distress because of the lack of means for their support, while the head of the family was "obliged to pay for his own maintenance in prison." Mr. Daveis accordingly asked for "such aid and advice as the condition and circumstances of Mr.

¹*Document No. 126*, 25th Congress, Second Session, 335.

²*Ib.*, 336-344.

Baker and his family may require and the government of the state may see fit to extend.”¹

Ten days later, October 23, 1828, Governor Lincoln wrote to Mr. Clay, inclosing Mr. Daveis' note. After referring to the fact that Mr. Baker was still a prisoner “under the domination of that government of which the president long since demanded his release with indemnity,” he added: “His family is numerous and respectable, and reduced to want by the absence of a husband's and parent's care. His property was growing by his industry and economy, but is falling fast to ruin; and he is a solitary American in a foreign jail. In his conduct he has exhibited the utmost discreetness; and while, with the firmness of a freeman and the dignity of a patriot, he has denied the jurisdiction of New Brunswick over his person and property, he has submitted with patience to the power which it belonged only to Maine and his country to resist;” and he advised that inasmuch as Mr. Baker's family was in distress, that the national government should reimburse the state for its advance of two hundred and twelve dollars for their relief. In his reply, Mr. Clay, after expressing regret that Baker's release had not been secured, informed the governor that the president had authorized the reimbursement of the state for the money advanced in Mr. Baker's interest, and that the governor's draft for the amount mentioned in his letter would be duly honored.²

When the legislature of Maine convened at the opening of the new year, Governor Lincoln, in his annual message, said that during the year just closed a garrison had been established on the eastern frontier, an agent had been appointed by the state for service there, provision had been made for a military road in the boundary region, and the interests of John Baker had been assumed by the national government. As affairs now are, said the governor, it rests on the magnanimity of Congress not to allow him to suffer in the hands of a foreign power.³

¹*Document No. 126, 25th Congress, Second Session, 345.*

²*Ib., 344-346.*

³*Resolves of Maine, II, 13.*

However, Mr. Baker was not brought to trial until May 8, 1828, a little more than seven months after his arrest. The trial, at the bar of the supreme court in Fredericton, was before Chief Justice Saunders, Justice Bliss and Justice Chipman, the latter already known to the reader as the British agent in the proceedings of the St. Croix commission and of the Passamaquoddy Islands commission. Baker was charged with conspiracy and sedition, and among the overt acts mentioned in the charge was that of raising in the parish of Kent, County of York, the flag of the United States and declaring the place where the flag was raised United States territory. The attorney general conducted the prosecution. Baker was without counsel, and when called upon for his defence addressed the court briefly, declaring himself a citizen of the United States, holding his land from the states of Maine and Massachusetts, and denying that he was amenable to New Brunswick courts. "I enter no defense," he said, "and call no evidence." The attorney general then addressed the court, and after Justice Chipman's charge, which was of considerable length, the case was given to the jury, which returned a verdict of guilty. May 12th, Mr. Baker was again brought into court and was sentenced to two months' imprisonment in the common jail of the county, also to pay a fine of twenty-five pounds. How long he remained in captivity is not stated, but it must have been more than a year. Great Britain declined to listen to President Adams' repeated demands for his release. After his discharge, Baker returned to his home at Baker's Brook. He was present at the organization of the town of Madawaska in 1831, and took an active part in the proceedings.¹

New Brunswick gained a temporary victory in the arrest and imprisonment of John Baker. It was a victory, however, that served only to embitter the people of Maine against their provincial neighbors for a long time. In the final settlement of the boundary controversy, the land of John Baker was left within the territory of the state and of the United States. Under the ener-

¹ Paper read before the Maine Historical Society, by Mr. George S. Rowell.



THE JOHN BAKER MEMORIAL.
Erected by the State of Maine in 1895 at Fort Fairfield.



getic and inspiring leadership of Governor Lincoln, Maine also had a victory of her own—a victory in winning to her side the support of the national government in maintaining that the United States could not cede any portion of the territory of Maine without Maine's consent; also in securing the government's acceptance of her urgent request that the United States should demand of the British government the release of John Baker, and an indemnity for his sufferings and imprisonment.

CHAPTER VII.

BOUNDARY DIFFERENCES REFERRED TO THE KING OF THE NETHERLANDS.

AFTER Commissioners Barclay and Van Ness failed to agree upon the boundary matters submitted to them, it only remained for the two governments, in accordance with the provisions of the treaty of Ghent, to refer the reports of the commissioners "to some friendly sovereign or state to be named for that purpose." Before such a reference was secured, however, wearisome delays were encountered. Allusion has already been made to an effort on the part of the United States to obtain a settlement of the boundary matter by direct negotiation. In 1826, Mr. Albert Gallatin was sent to England, as United States minister, partly with reference to such an arrangement. He was one of the commissioners representing the government at Ghent in 1814, was familiar with boundary concerns, and his experience in diplomatic affairs was such as to awaken hopes that by such direct negotiations a more satisfactory result would be reached than by arbitration. After Mr. Gallatin's arrival in England, various conferences with reference to the boundary were held in London, in which Mr. Gallatin represented the United States, and Mr. Charles Grant (succeeded by Mr. William Huskisson) and Mr. Henry Unwin Addington represented Great Britain.

Mr. Gallatin very soon learned that the British government was not in favor of the substitution of negotiations at Washington for arbitration by a friendly European sovereign; and all his energies were directed to such a careful, diligent consideration of matters pertaining to the case to be presented to the arbiter as would be most helpful. At these conferences Mr. Gallatin found Mr. Addington "extremely unmanageable," not from ignorance, for he was well instructed in the various branches of inquiry in refer-

ence to the history of the controversy, but because he had made all the prejudices and enthusiasm of the provincial agents and officials his own. "His object," wrote Mr. Gallatin to Mr. Clay March 6, 1827, "is clearly not that the parties should have a fair trial before the arbiter, but to take every advantage he can possibly gain."¹ Believing that the first act of the arbiter would be to demand an actual survey to be substituted for the two contradictory maps already made, Mr. Gallatin proposed the preparation of a general map representing the water courses, etc., the north line from the source of the St. Croix, and the boundary lines claimed by the two governments. This proposal was accepted. On the difficult point as to what must be considered "highlands," as mentioned in the treaty of 1783, however, they had not been able to agree; and in this connection Mr. Gallatin complained of perplexities, "countenanced by a letter from Judge Sullivan to Mr. Madison and one from Mr. Madison to Mr. King," both of which had been published in the United States.²

September 21, 1827, Mr. Gallatin wrote to Mr. Clay that an agreement had at length been reached for submitting the north-eastern boundary controversy to a friendly sovereign in conformity with the fifth article of the treaty of Ghent. In accordance with this agreement, all the evidence laid before the commissioners during the sessions of the defunct commission was to go to the arbiter, but not the arguments of the agents and the reports made to the commissioners, these being so voluminous and complicated as to render it improbable that any sovereign or state would be willing or able to undertake the office of investigating and arbitrating upon them. In place of these, statements prepared by each party would be substituted and each would have the privilege of reply. New evidence, also, could be presented within nine months after the exchange of ratifications, and the arbitrator was to have the right to call for additional evidence

¹ Henry Adams, *Life and Writings of Albert Gallatin*, II, 361, 362.

²Ib., II, 369, 370.

and enclosures, also to order new surveys if he should consider it necessary.¹

After the conclusion of the conventions in London, Mr. Gallatin returned to the United States. In a letter, informing him that he had submitted the papers concerning the agreement to the Senate of the United States, the president added, "I wish they may prove as satisfactory to them as they have been to me."² This agreement, ratified in London, April 2, 1828, was made public by the president May 15th following. In the fourth article Mitchell's map was acknowledged to have regulated the official proceedings of the convention. Reference also was made to a map A delineating the water courses as agreed on by both of the contracting parties. These maps were to be the only maps considered as evidence; but it was to be considered lawful for either party to annex to his first statement, for the purposes of general illustration, any maps, surveys or topographical delineations which were filed with the commissioners under the fifth article of the treaty of Ghent, any engraved map heretofore published, and also a transcript of map A, or a section thereof, in which transcript each party might lay down the highlands or other features of the country, as it should think fit; the water courses and the boundary lines, as claimed by each party, remaining as laid down in map A. But this transcript, as well as all the other maps, surveys, or topographical delineations, other than map A and Mitchell's map, intended to be thus annexed by either party to the respective statements, were to be communicated to the other party within nine months after the exchange of ratifications, and were to be subject to such objections and observations as the contracting parties might deem it expedient to make thereto.³

It was also provided that all the statements, papers, maps and documents which shall have been mutually communicated should, without any addition, subtraction or alteration, be jointly and

¹ Henry Adams, *Life and Writings of Albert Gallatin*, II, 388.

² *Id.*, 398.

³ *American State Papers*, VI, 1000-1002.

simultaneously delivered to the arbitrating sovereign, within six months after his consent to accept his appointment.¹ According to the seventh article the decision of the arbitrator was to be taken as final and conclusive, and it was to be immediately carried into effect by commissioners appointed for that purpose by the two governments.

In his annual message to Congress, December 2, 1828, President Adams announced that by an agreement with the British government, carrying into effect the provisions of the fifth article of the treaty of Ghent and the convention of September 29, 1827, the king of the Netherlands had been selected in another friendly effort for a decision of the long standing controversy. The proposal to the king to act as umpire between the two parties for the performance of this friendly office, he said, would be made at an early day, and he added, "the United States, relying upon the justice of their cause, will cheerfully commit the arbitrament of it to a prince equally distinguished for the independence of his spirit, his indefatigable assiduity to the duties of his station, and his inflexible probity."² This was high commendation, and the words of the president served as a very favorable introduction of the arbitrator to the people of the United States. Other representations of the qualifications of the king for such an appointment, however, had reached this country, as has already been mentioned, and were by no means favorable. Governor Lincoln, of Maine, alluding to this selection in his annual message to the Legislature, January 8, 1829, found no objection to the arbitrator, and hopefully assumed that the king would act as a "magnanimous dis-

¹At the suggestion of Judge Preble (who had been appointed "Envoy Extraordinary and Minister Plenipotentiary of the United States near the Government of the Netherlands"), Mr. Charles S. Daveis, of Portland, was made by the president "Special and Confidential Agent of the United States" to receive the books, documents, maps, etc., that were to be used by the king of the Netherlands in his consideration of the boundary controversy, and take them to The Hague. Mr. Daveis sailed from New York January 11, 1830, and reached The Hague March 13th, where he discharged the duties of his mission.

²*Messages and Papers of the Presidents*, II, 408.

poser of justice," having the opportunity to achieve a "most glorious victory by the suppression of the most extreme error."¹

The members of the legislative committee, to whom was referred so much of the governor's message as dealt with matters pertaining to the northeastern boundary, made no reference in their report to the friendly sovereign appointed as umpire; but they resented the failure of the authorities of New Brunswick to observe the understanding to refrain from the exercise of sovereignty rights over the disputed territory while negotiations were in progress; and the committee added: "It is evident, therefore, that we are not restrained by any supposed understanding between us and the British government from causing the authority of our laws to operate for the protection of our citizens settled on this territory, still less that we are not at liberty to prevent the forest lands from being stripped of their timber. The government of the United States, though it has assumed (and we are not disposed at this time to question the right) the authority to settle our title to this tract of country, by referring the dispute to an umpire, has no means, it will be recollected, of exercising actual jurisdiction, or of making itself felt on this territory, except through the instrumentality of this State and its laws. If, then, the controversy should fail to be settled within two years, the time stipulated within which the umpire must decide, and which is perhaps not improbable, the question occurs, are we to remain silent and passive spectators, while our neighbors of New Brunswick shall strip the land of its timber, persecute and expel our citizens and cause their own settlers to spread over the territory? It is not believed the people of Maine are prepared to submit to such

¹ *Annals of Maine*, 11, 13, 14. Evidently the governor spoke under much restraint. At a later period in the controversy, Mr. Davis, in a legislative report (March 30, 1841, *Maine Senate Document No. 19*), referring to this selection of the king of the Netherlands, gave expression to a general view in Maine concerning it at the time in these words: "It was at this moment

... that Maine suddenly saw the sword suspended, as it were, over her head, or perhaps we should more fitly say, when she beheld the scales about to be put into the hand of an arbiter, whose acknowledged bias, would be, the same whether king or farmer, to split the difference."

usurpation—that they will suffer nearly one-third of their whole territory to be thus wrested from them without an effort or a murmur. The people of this State have a constitutional right to claim, and do claim of the government of the United States, that they will not suffer the integrity of our State to be violated—that they will assist us in preserving our ancient landmarks, and in vindicating our undoubted right to all the territory assigned and secured to us by the treaty of 1783.”¹

Governor Lincoln at this time was in the prime of life, being forty years of age. During his governorship he had devoted himself unsparingly to the duties of his office. He was interested in everything that pertained to the welfare of the people of Maine. He had a large vision of the future of the state, and sought in every way to advance all moral, educational and civil concerns. To internal improvements he gave much consideration. His firm and intelligent action in matters pertaining to the boundary controversy has already been mentioned. It was his purpose, however, to retire from the governorship at the close of his present term, and give himself to agricultural and literary pursuits. He was fond of outdoor life. He loved the forests and lakes of Maine. But scholarly activities had their allurements. He had gathered much material with reference to the state, its history, its resources, etc. He had also given considerable attention to the language and life of the Indians of Maine. It was a pleasing future that was opened before him, but he was not permitted to enter upon its employments. His health now began to fail, while he still busied himself at his tasks. In July, he went from Portland to Augusta to deliver an address at the laying of the cornerstone of the capitol of the state. Again, early in October, he made his way to Augusta to make an address at the opening of the Cony Female Academy. He left Portland with an impression that he would not return, but he had heard the call of what he regarded as duty, and that was a call he could not refuse to heed.

¹*Resolves of Maine*, II, 77-79.

He died October 8, 1829, and was buried with public honors in the state park between the capitol and the Kennebec.¹

After the selection of the king of the Netherlands as arbitrator, there was additional delay in boundary considerations because of the time needed for the preparation of the statements required for submission to the king. The statement for the United States was prepared by Mr. Gallatin, who had the able assistance of Judge William Pitt Preble of Maine. In that part of the argument devoted to the signification of the term "highlands" as used in the treaty of 1783, Mr. Gallatin insisted that the term does not necessarily mean a mountainous country, but was judiciously selected in reference to an unexplored country, as applicable to any ground along which the line dividing the rivers designated by the treaty should be found to pass, and was used as synonymous with "height of land," Mitchell's map proving that the negotiators did not by "highlands" mean a generally mountainous country, as the mountains indicated on that map commence more than forty miles west of the source of Mitchell's river St. Croix, and of a line drawn due north from that source. If, therefore, the framers of the treaty of 1783 had meant a mountainous country, they would have given to the boundary line the direction necessary, in order that it should meet what was on Mitchell's map laid down as such, and must necessarily have defined that line as running from the source of the river St. Croix, or from some point on the due north line, towards the country thus delineated on the map as mountains.

Following this examination of objections to the American line, Mr. Gallatin proceeded to show that the terms of the treaty of 1783 were irreconcilable with the British pretensions concerning the boundary; that the northwest angle of Nova Scotia must be on the dividing highlands; and that the boundary line from the

¹An interesting paper on the life and services of Governor Enoch Lincoln was read before the Maine Historical Society, December 23, 1882, by Mr. Edward H. Elwell. It will be found in the first series of the *Collections of the Maine Historical Society*, VIII, 137-157.

d angle to the northwesternmost source of the Connecticut river must be along the said dividing highlands. He also considered the interpolations and substitutions of other expressions the terms of the treaty, suggested by the British agent and commissioner under the late commission, and the attempts made pervert the meaning of the words "to divide." He also sought ascertain the intentions of the framers of the treaty of 1783, as deduced from the identity of the boundary, designated by the treaty, with those assigned by the previous public acts of Great Britain to the provinces of Quebec and Nova Scotia; as inferred from the maps published between 1763 and 1783; and as proved by Mitchell's map, which was acknowledged to have regulated the joint and official proceedings of the framers of the treaty.

The argument for the American claim was closed with showing that by the term, "northwesternmost head of Connecticut River," the negotiators of the treaty must have intended that source which would be found to lie northwest of any other, without any preference whatever to either of the branches to the exclusion of the other; also with an examination of the boundary line from the Connecticut River to the river St. Lawrence—a line ascertainable without practical difficulty, as it was known through its whole extent, having been for nearly sixty years the acknowledged boundary between the province, or state of New York, and Canada, and as the line separating, from each other, the grants of land made in that quarter, by the two governments, from the Connecticut to the river St. Lawrence.¹

The statement was signed by Albert Gallatin and William Pitt Esdaile, "agents of the United States in the negotiation and upon the subject of the boundary relating to the northeastern boundary of the said States."

The British statement² was presented under the same three

Definitive Statement on the Part of the United States, Washington, 1829.

Its preparation was confided to the zeal and ability of three men distinguished in British diplomacy. Mr. Addington drew up the first document, Stratford Canning the second. Sir C. Vaughan was minister at Washington.

general heads as in the American statement. With reference to the northwest angle of Nova Scotia, the British government contended that the point thus designated "is found at or near an elevation called Mars Hill, which is situated in a due north line drawn from the source of the St. Croix River and south of the River St. John; that the highlands intended by the treaty are those extending from that point to the Connecticut River; and that the rivers Penobscot, Kennebec and Androscoggin are the rivers falling into the Atlantic Ocean which are intended by the treaty to be divided from the rivers which empty themselves into the River St. Lawrence." On the other hand the "highlands" claimed by the United States divided waters emptying into the river St. Lawrence from waters flowing into the Bay of Chaleurs and the Gulf of St. Lawrence, or else through the river St. John into the Bay of Fundy; while the "highlands" referred to in the treaty were said to divide waters flowing into the river St. Lawrence from those flowing into the Atlantic Ocean. This, it was claimed, was "the cardinal point" of the whole of this branch of the discussion. The "highlands," according to the treaty of 1783, must divide waters emptying into the river St. Lawrence from waters emptying into the Atlantic Ocean, not into the Gulf of St. Lawrence and the Bay of Fundy, as in the American claim. This was the custom of geographers in designating arms of the sea by specific names. Thus on Mitchell's map the Gulf of St. Lawrence and the Bay of Fundy are separately distinguished from the Atlantic Ocean.¹

A second, or definitive statement, was made by each of the two governments. That of the United States was a vigorous reply to the positions taken by Great Britain in its first statement; while

¹Of course, what is here said of the custom of geographers, in designating subordinate divisions of the sea by special names, is true; but any such special designation is not a denial that great divisions of the sea, like the Atlantic Ocean, also embrace subordinate subdivisions like the Bay of Fundy. This "cardinal point" in the British statement was at first only a "hint." Concerning its origin in connection with the boundary controversy, see Moore's *International Arbitrations*, I, 107-110.



JONATHAN G. HUNTON.

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the British second, or definitive statement, was not a reply to that made by the United States, but a supplementary presentation of the British case.

The American and British statements were presented to the king of the Netherlands January 10, 1829. In his annual message to the Legislature of Maine, February 10, 1830, Governor Hunton¹ alluded to the reference of the boundary controversy to "the high personage agreed upon in the convention" in London. Evidently a fear had been expressed in some quarter that jurisdiction upon a question different from that officially submitted might be urged upon the arbitrator. Should that be the case, the governor indulged the hope that the high character of the sovereign selected would not permit him to be a party to any such action. As to an early decision upon matters thus to be determined by arbitration, however, the governor was not hopeful. It might not definitely be announced "before the expiration of many years," he said.²

A year passed, and in his annual message January 8, 1831, Governor Smith³ had little information to communicate with reference to boundary matters. His words, however, manifested great solicitude lest the rights of the state should not be maintained. As to the progress that had been made during the year

¹ Jonathan G. Hunton (oftentimes Huntoon in the press of that day) was a native of Unity, New Hampshire, but came to Readfield, Maine, while a young man, and studied law with his uncle, Samuel P. Glidden. He was elected governor during the political excitement connected with the election of General Jackson as president of the United States.

² *Resolves of Maine*, II, 97.

³ Samuel F. Smith, born in Leominster, Massachusetts, and a graduate of Harvard College in 1808, established himself in the practice of law in Wiscasset, District of Maine, in 1812. In 1821, he was appointed chief justice of the circuit court of common pleas for the second circuit. The circuit system having been abolished in 1822, he was made an associate judge, with Ezekiel Whitman as chief justice. He was thrice elected governor of Maine, holding that office in 1831, 1832, 1833. The removal of the seat of government from Portland to Augusta occurred in his administration, the Legislature holding its first session in Augusta in January, 1832.

toward a final adjustment of the boundary controversy, it was not in his power, he said, to give definite information; but he suggested that delay probably had been occasioned "by the late disturbances in the dominions of the King of the Netherlands." The reference was to an uprising in Belgium by which the king was deprived of a part of his sovereignty which included nearly three-fifths of his subjects, and left him, in reality, king of Holland only. This, the governor feared, would make the king dependent on Great Britain for succor and support, rendering it doubtful at least if he would be able to give a just decision on the delicate and important questions which had been referred to him as arbitrator. "If the effect of this revolution," said the governor, "should be to unite in still closer bonds of amity the former friendly and intimate relations of the King of the Netherlands with Great Britain, which seems to be probable, it must be considered that the agreement to refer would, in that event, be rendered of no avail. Whatever confidence may be put in the justice of our cause, however clearly our right may be shown in argument, we certainly could not be willing to submit it to the umpirage of a sovereign, who is not only the ally, but who by the force of circumstances, may have become in some measure the dependent ally of Great Britain."

Evidently, however, there was a deeper cause for the governor's anxiety than is indicated in this reference to affairs in Belgium. As United States minister to The Hague, Judge Preble was in close touch with those who were more or less familiar with matters under consideration in diplomatic circles; and it is not to be supposed that he left his friends in Maine without such early information as to boundary concerns as reached him from time to time.¹ At all events, however received, information that the decision of the king of the Netherlands had been reached, and

¹ The official correspondence in the possession of the State of Maine with reference to northeastern boundary considerations is singularly lacking in communications from January 1, 1829, to March 9, 1831.

would be found to take the form of a compromise, seems to have been the real ground of the governor's anxiety.¹

Public information with reference to the decision, however, was not long lacking. The following, taken from the *Boston Advertiser*, appeared in the *Eastern Argus*, published in Portland, February 28, 1831. "We learn from the *London Morning Herald* of January 19th and 20th that the king of the Netherlands has decided on the question submitted to his determination by the British and United States governments, that the boundary line shall run due north from the St. Croix until it strikes the river St. John, thence running along the St. John to the river St. Francis, and thence strikes off along a tract without any natural marks of highlands, or rivers, to the foot of the ridge bounding the St. Lawrence. By this decision the territory in dispute is divided and the greater, and probably the most valuable portion, is given to the United States, but the northern portion, containing the whole valley of the Madawaska river and Timsconta Lake and the country through which the line of communication between New Brunswick and Lower Canada passes, is given to Great Britain. The settlements on the Madawaska of course go to the colonies, and those on the south side of the St. John to the United States. The principle on which this decision is made is not explained. It probably proceeded from a desire to satisfy both parties, by giving to each so much of the contested territory as is of most importance to it. Somewhat petulantly the *Herald* remarked: 'His Orange Majesty must have vaster ideas of space than his present limited sway would lead us to believe.'"

The king of the Netherlands announced his decision January 10, 1831. It is possible that a communication from Judge Preble concerning the decision had been received by the governor of Maine by this time. February 28, 1831, was on Monday, and as the Legislature did not meet on that day until the afternoon, the *Eastern Argus* of that date was probably in the hands of its members. The Journal of the Maine House of Representatives for

¹*Resolves of Maine*, II, 148-150.

February 28, 1831, contains this record: "Mr. Deane of Ellsworth laid upon the table certain papers, and the House, on his motion, voted to sit with closed doors during the consideration thereon, which continued until House adjourned." In the Journal of the Senate for Monday afternoon, February 28, 1831, occurs the following paragraph: "The clerk of the House of Representatives came in and laid on the table a document from the House, and on the suggestion being made by the president that said document was of a confidential nature, the Senate was cleared of spectators and the oath of secrecy administered to the messenger. The president then proceeded to read said document, which proved to be a report of the committee, with certain resolutions in relation to the decision of the umpire in relation to the Northeastern Boundary. After some debating, the question of accepting said report, and passing said resolutions, was ordered to be taken by yeas and nays and decided in the affirmative as follows, to wit: Yeas, Messrs. Dunlap, Gardner, Goodwin, Hall, Harding, Hutchings, Ingalls, Kingsbery, Megquier, Pike, Steele and Sweat, 12. Nays, Messrs. Drummond, Eastman, Fuller, Hinds and Hutchinson. S. W. Morse was excused from voting on the question."¹

The document laid before the Senate was a report of a joint committee of the Legislature having in charge matters pertaining to the boundary. In it the firm position already taken by the state, that the government of the United States had no right to cede any portion of Maine territory without the consent of the state, was stoutly asserted. "Whenever that takes place," continued the report, "the people of this happy and flourishing country will be reduced to the condition of the people of other countries; they will have just as much, and no more liberty, than the government will graciously permit them to enjoy."

A more ringing utterance followed in the resolutions that were adopted by the Maine Legislature and in the preamble by which they were preceded:

"Whereas, By the convention of September, 1827, an independent sovereign was to be selected by the governments of the United States and Great

¹ Copy furnished by the secretary of state.

, to arbitrate and settle such disputes as had arisen, and the king of the Netherlands was, pursuant to that convention, selected the arbiter, while the independent sovereign, in the plenitude of his power, exercising dominion and authority over more than 6,000,000 of subjects:

and Whereas, By the force of the prevalence of liberal opinions in Belgium the Belgians overthrew his power, and deprived him of more than half his dominions and reduced him to the former dominions of the Stadtholder, leaving him with the empty title of the King of the Netherlands while he is King of Holland, and thereby increasing his dependence upon Great Britain for holding his power even in Holland, which from public appearance he held by a very doubtful tenure in the affections of the Dutch:

and Whereas, The King of the Netherlands had not decided before his realm was dismembered and he consented to the division, and his public character had changed, so that he had ceased to be that public character and independent station among the sovereigns of Europe contemplated by the convention of September, 1827, and which led to his selection: therefore, Resolved in the opinion of this Legislature, That the decision of the King of the Netherlands cannot and ought not to be considered obligatory on the government of the United States, either on the principles of natural justice, or of honor.

Resolved further—for the reasons before stated—That no decision made by an umpire under any circumstances, if the decision dismembers a State, can have, any constitutional force or obligation upon the State thus dismembered, unless the State adopt and sanction the decision.”¹

The decision of the king was officially communicated to both governments through their official representatives at The Hague. A few days later,² Judge Preble, the United States minister at The Hague, addressed a letter to Baron Verstolk Van Socolen, the king's minister of foreign affairs, protesting against the decision as constituting a departure from the power delegated by the two governments in that the king had abandoned altogether the boundaries of the treaty of 1783 and substituted for them a distinct and different line of demarcation.³ On the 15th, also, in order that the faith of his government, its rights and interests might not be supposed to be committed by any presumed acquiescence on our part in the procedure, Judge Preble addressed a note to Sir

olves of Maine, II, 242-246.

January 12, 1831.

olves of Maine, II, 257-260.

Charles Bagot, the British ambassador at The Hague, expressing his regret that the arbitrator, "finding himself unable to decide between their conflicting claims," had departed from the powers delegated to him;¹ and he enclosed a copy of his letter to the king's minister of foreign affairs. Both of these communications he forwarded to the secretary of state in Washington, adding, "In the course adopted by me, I am fully aware that I have assumed some responsibility; at the same time, I am also aware that the government of the United States are not at all committed by any act of mine, but are left perfectly free to pursue their own measures according to what may to them seem most fit and expedient."²

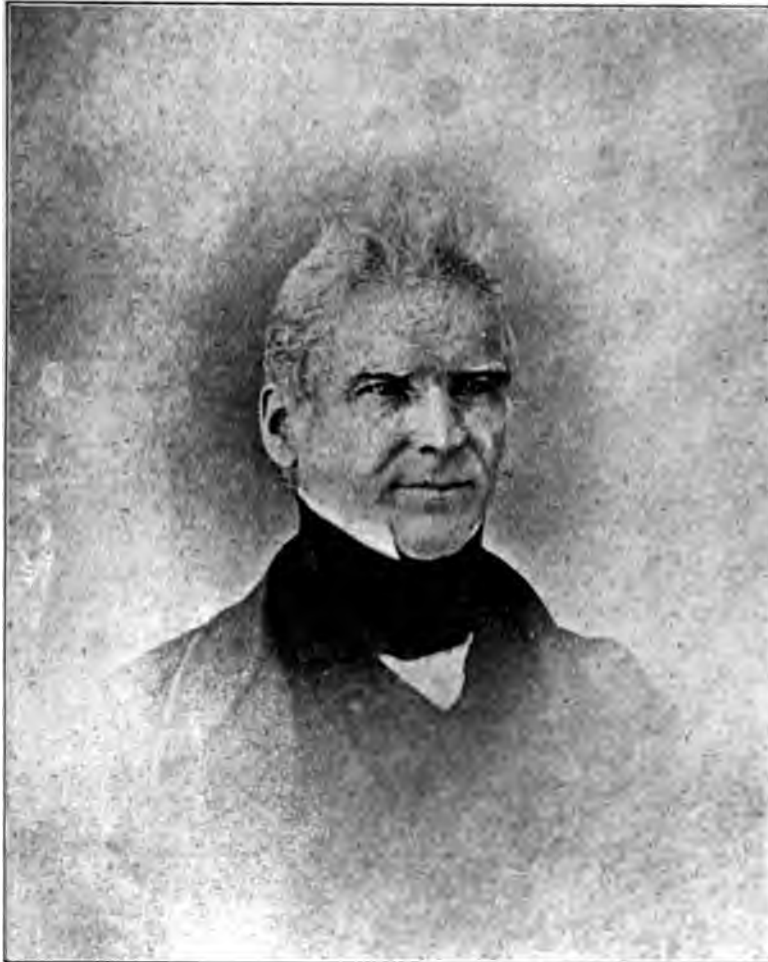
January 17th, in his reply to Judge Preble's note, Sir Charles Bagot expressed regret that he could not coincide with the opinion it contained; but regarding it as one upon which their respective governments alone had power to decide, he deemed it best to leave the matter in their hands.³ Judge Preble, however, did not cease his activities. On January 25th, he addressed a communication to Mr. McLane, the American minister in London, in which he reviewed at considerable length the questions at issue with reference to the boundary.

The full text of the decision of the king of the Netherlands reached Washington on March 16th, and on the 18th, Mr. Van Buren, the secretary of state, transmitted a copy and translation of the award to Governor Smith, of Maine. Four days earlier, however, Mr. Vaughan, the British minister in Washington, wrote to his home government: "It has been long known at Washington, that his Majesty, the King of the Netherlands, delivered on the 10th of January to Mr. Preble, the minister from the United States, his decision upon the question of boundary referred to arbitration. I am assured, however, by Mr. Van Buren, that his government has not yet received the official communication

¹ Minutes of March 11, 1831.

² *Id.*, 11, 280.

³ *Id.*, 11, 282.



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of his Majesty's decision; though it appears that some communication of the import of it has been made by Mr. Preble to the State of Maine,¹ to which he belongs; as it is stated in the newspapers that the Legislature of that State immediately took it into consideration in a secret session; and it is reported that general dissatisfaction was expressed with the decision of the arbiter."

On the day following the secret session of the Maine Legislature, the injunction of secrecy was removed with reference to the proceedings of that session so far as to allow a copy to be communicated to the governor, and he was requested to communicate with the president forthwith concerning them. Certainly there was no further need of secrecy with reference to the proceedings of the Legislature. The newspapers, as already stated, had announced the decision. The *Eastern Argus* of Portland contained the following editorial comment: "It will have been seen by our last that his Dutch Majesty has decided the boundary question, and decided the dividing line to be where nobody ever dreamed of its being before. . . . Better would it have been to have left the decision to the Lord Chancellor of England. But shall this signal absurdity be submitted to? Is our State, and the United States, to be thus dismembered, giving to England a commanding post in our rear, and placing Maine at the mercy of a nation whose whole history has been a series of violations of the rights of other nations, and a continued unprincipled struggle for territorial aggrandizement by the double means of force and fraud? If we submit to this, it will be a general invitation to the rest of the world to come and take whatever part of our territory their caprice and cupidity may desire."² This was the general attitude of the newspapers of the state with reference to the decision of the king of the Netherlands. Party lines largely disappeared. The Maine House of Representatives reflected the sentiment of the people throughout the state concerning the

¹If Judge Preble made such a communication, it has not been preserved with other papers referring to the northeastern boundary.

²*The Eastern Argus*, March 7, 1831.

boundary by the final passage, March 4th, of a bill incorporating the town of Madawaska.

It was not until March 25, 1831, however, that Governor Smith, in a message to the Legislature, announced his reception of a copy and translation of the award of the king of the Netherlands. At the same time, Secretary Van Buren assured the governor that the award would "receive all the attention and consideration to which its great importance, and the interests of the State of Maine, so materially involved therein, especially entitle it in the councils of the executive of the United States." Mr. Van Buren also expressed the desire of the president that while the matter was under deliberation, no steps should be taken by the state that might "interrupt or embarrass the action of the executive branch of the government of the United States."

The British minister at Washington, writing March 20th, informed his government that the decision of the king was despatched by a messenger to the government of the State of Maine with an official communication; and he added: "This government [the United States] has resolved to abstain from any expression of an opinion until they are in possession of the answer to their official communication of the award to the State of Maine."¹ If there was excitement in Maine at the announcement of the decision of the king of the Netherlands, there was no little excitement in England at this announcement that the United States government would abstain from any opinion concerning the award until it was in possession of Maine's answer to the government's official communication.²

¹ Urquhart, *Exposition of the Boundary Differences*, 19.

² "The reference to the State of Maine of a matter of treaty stipulation between the States is the clearest proof of the hostility of the government to a settlement of the question, and the suspending of a reply till they receive the decision of Maine, as if the power resided in that State, or as if the opinion of that State were doubtful, exhibits a settled plan of misrepresentation and deception, of course not without an end and object, which, to avow, would be to frustrate, and which to attain, required deception." Urquhart, *Exposition of the Boundary Differences*, 19.

The full text of the decision of the king of the Netherlands is too long for insertion.¹ The following statement covers its principal points. As to the term "highlands," the arbitrator held that it applies not only to a hilly or elevated country, but also to land which without being hilly divides waters flowing in different directions, and therefore that the more or less hilly character of the country through which are drawn the lines of the contestants, at the north and at the south of the St. John River, could not form the basis of a choice between them. Moreover, the arguments adduced on either side and the documents presented in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of either one of the two lines claimed, while the vague and not sufficiently determinate stipulations of the treaty of 1783 do not permit an award to either party without violating the principles of law and equity. The king, therefore, was of the opinion that a suitable boundary could be found by "a line drawn due north from the source of the river St. Croix to the point where it intersects the middle of the deepest channel [thalweg] of the river St. John; thence, the middle of the deepest channel of that river, ascending it to the point where the river St. Francis empties itself into the river St. John; thence, the middle of the deepest channel of the river St. Francis, ascending it, to the source of its southwesternmost branch; thence, a line drawn due west to the point where it unites with the line claimed by the United States." As to the northwesternmost head of Connecticut River, the arbitrator was of opinion that the stream situated farthest to the northwest among streams which fall into the northernmost of the three lakes, known as Connecticut Lake, must be considered as that head. With reference to the 45th parallel of north latitude, the arbitrator held that it would be suitable to follow the customary principle of observed latitude in marking out the boundary from the Connecticut River along the 45th parallel of north latitude to the St. Lawrence River, but

¹It will be found in Moore's *International Arbitrations*, I, 119-136.

in such manner that Rouse's Point should be included in the territory of the United States.

An eminent authority estimating the disputed territory as containing an area of 12,027 square miles, or 7,697,280 acres, said the award of the arbitrator gave to the United States 7,908 square miles, or 5,061,120 acres and to Great Britain 4,119 square miles or 2,636,160 acres.¹

The joint select committee of the Legislature of Maine, to which the governor's message of March 25, 1831, was referred, presented a report five days later. First of all the committee referred to the revolution in Belgium, which, from the course pursued by Great Britain, naturally not only increased the dependence of the arbitrator upon that country, but compelled him to call upon Great Britain for assistance to enable him to maintain his position even in Holland. The British, long before the decision, were his private counsellors. "He was within their power and control. Having then lost the character possessed at the time of the selection, the king, or sovereign power of the Netherlands, ceased to be the arbiter to whom the differences had been submitted. A decision after such a change of character and interest cannot, for any purpose, be considered as having any obligatory force or effect; it can be considered only a mere nullity."

Proceeding to a consideration of the text of the award, the committee raised the question, "Has the arbitrator decided the point of difference which had arisen between the two governments?" After citing the language of the award, viz., "We are of opinion that it will be suitable to adopt as the boundary," the committee remarked this is the language of recommendation or advice to the parties of a course to be adopted by them, rather than a decision. The arbitrator did not pretend to decide, and declared that he could not decide the point in controversy as to the location of the northwest angle of Nova Scotia and the "highlands" dividing the rivers emptying into the St. Lawrence from those that fall into the Atlantic Ocean. He only intended to suggest a way by

¹ Moore, *International Arbitrations*, I, 136, 137.



... decision was rendered, or when
so exceeding the authority given) would be a violation of constitutional rights to which the State of Maine could not submit

¹*Resolves of Maine*, II, 263-276. The report was signed by John G. De
per order of the committee. In all matters pertaining to the boundary,

The governor was requested by the Legislature to transmit a copy of this report to the president of the United States, also to the governors of the several states comprising the United States.

Mr. Van Buren, the secretary of state, informed Governor Smith March 18th, that Mr. Preble, American minister to The Hague, had asked for a leave of absence in order that he might be heard upon the decision of the king of the Netherlands "before any measures in regard to it are adopted by the President." This request, the secretary said, would be granted. The only letter from Judge Preble to Governor Smith in the archives of the State of Maine, having reference to the decision of the king of the Netherlands, is dated "The Hague, May 3, 1831." After mention of certain papers transmitted with the letter, including a copy of the award, Judge Preble's letter to the king's minister of foreign affairs, his letter to the British ambassador to The Hague and his letter to the American ambassador in London, the writer added: "At no time was the selection of the King of the Netherlands as arbiter a favorable one, either as respects the personal character of the man, or his political position. In Europe, not excepting England, it was matter of astonishment that the United States should ever have consented to it. At the same time it should be remembered that between the time of his selection and that of his acting, the position of the arbiter underwent a great change. The revolution in France and the troubles in Belgium left to the government not even the show of independence, but, drawing aside the veil of form, exhibited King and Court as the humble, entreating, subservient dependents of Great Britain. Strong as this language may well appear to you, there is no decent language which could convey to you too vivid an impression of the fact. So much, however, had been said by courtiers and others of the King's integrity and sense of justice, that, contrary to my own internal conviction, I suffered myself to hope even

Deane's services were of very great value. He had been not only a diligent, careful student of the various problems of boundary concerns and could give forceful expression to the opinions he had formed, but in 1830, he had visited the boundary country with Judge Preble by order of the government.

against hope. I was unwilling to believe that a man occupying so elevated a situation would make that his shame which he and his people had estimated so highly. In the meantime events continued to transpire and the instances of quibbling, evasion and petty wrangling which came to my knowledge exhibiting a mind mistaking puerile subterfuge for great sagacity and bad faith for policy taught me how little the United States, under existing circumstances, had to expect from his Majesty's integrity and sense of justice." ¹

February 9, 1831, Lord Palmerston, the British premier, in forwarding to the British minister in Washington a copy of the award of the king of the Netherlands, informed him that whatever might be the sentiments or wishes of the king of Great Britain upon some of the points embraced in the decision, his Majesty had not hesitated to acquiesce in that decision, and he was persuaded that such would be the course of the president of the United States. If, however, the American government should determine upon any such step as that taken by Mr. Preble in his protest, he was not to enter into any discussion of the subject, but say that he could only transmit any communication the government of the United States had to offer for consideration.² April 12th, the British minister informed Lord Palmerston that at length he was in possession of the manner in which the governor and Legislature of Maine had received the award of the king of the Netherlands, a newspaper in Portland³ having commenced, April 5th, the publication of documents that had been officially communicated by the president when the award was transmitted to the governor, and the minister inclosed the first of these publications. "I have endeavored," he added, "to procure from the secretary of state a copy of the proceedings of the Legislature of Maine, which will in time appear in the newspapers; but the government has not yet received any account of them."

¹ *Manuscript State Correspondence and Documents, Northeastern Boundary*, II, 130, 131.

² Urquhart, *Exposition of the Boundary Differences*, 22.

³ *The Eastern Argus*.

After his return to this country, Judge Preble published anonymously a pamphlet¹ in which, appealing to thoughtful citizens of the United States generally, he argued that the award of the king of the Netherlands did not decide which is the boundary of the treaty as required, but merely recommended one. The whole pamphlet was a plea for Maine's widest support in her contention against any such loss of territory as was made possible by the award of the king of the Netherlands. She was unwilling that her ancient boundaries should be removed. She was resisting a system of encroachment which was as unjust as it was persistent, and there was need that the people of the United States should understand the critical situation which the boundary controversy had reached because of the award made by the king of the Netherlands.

¹ It was printed in Portland in 1831, and was entitled "The Decision of the King of the Netherlands."

CHAPTER VIII.

OTHER BOUNDARY DISTURBANCES AT MADAWASKA.

MEANWHILE the Legislature of Maine had passed an act¹ incorporating the Madawaska settlement into a town to be known as Madawaska,² the inhabitants of the town to have the same duties and liabilities, and also the same privileges and immunities, as other incorporated towns in the state. Any justice of the peace within the county of Penobscot, or any justice whose commission extended to all parts of the state, was empowered to call a meeting of the inhabitants for the election of town officers. In accordance with this legislative action, Mr. William D. Williamson³ issued a warrant July 11, 1831, requiring Walter Powers of Madawaska to summon the inhabitants of the town to meet at the house of Peter Ligott,⁴ August 20, 1831, for the purpose of town organization in accordance with the provisions of the legislative act.⁵ When the inhabitants had assembled at the appointed time and place and had been called to order, Leonard R. Coombs, a captain in the militia at Madawaska acting under New Brunswick authority, protested against any further proceedings in connection with the purpose for which they

¹ March 15, 1831.

² It derived its name from the Madawaska River, which enters the St. John from the north at the point where the latter, coming from its sources in a northeast direction, makes a right angle, and flows southeast into New Brunswick.

³ This was the author of the well known *History of the State of Maine*, published in two volumes in 1832. A second impression, containing an appendix and a general index, appeared in 1839.

⁴ John Baker, in his deposition of October 12, 1831, mentions him as "Peter Lezart, a resident on the southern side of the river St. John." *Resolves of Maine*, II, 479.

⁵ *Executive Documents*, 25th Congress, Second Session, VI, 24.

had come together, and threatened those present with arrest and imprisonment if they should attempt to take the action contemplated in the warrant. Francis Rice, a resident of Madawaska, and a New Brunswick justice of the peace, also protested against the proposed action, "and used many opprobrious and threatening terms against the government,¹ and the authorities of the government of the State of Maine, and against all persons who were taking part or participating in the organization of the town." Notwithstanding these protests, and the excitement occasioned by them, order was at length restored. Barnabas Hunnewell was chosen moderator, Jesse Wheelock, clerk, and Daniel Savage, John Harford and Amos Maddocks, selectmen. About fifty or sixty persons were present, but a large number of them did not vote because of the threats made by the New Brunswick officials. The meeting then adjourned without day.²

As the Legislature of Maine had empowered the inhabitants of Madawaska to elect a representative in that body, in accordance with the provisions of the constitution of the state, another meeting, at which about eighty of the inhabitants of the town were present, was held at the house of Raphael Martin on the second Monday in September, 1831, the day of the state election. Mr. Rice was present at this meeting also and protested against the right of the inhabitants to hold such a meeting, noting "in writing the proceedings and the names of all persons who voted, using as before menacing words towards those who refused to recognize his authority." The selectmen called him to order, however, and in the business that followed, Peter Ligott was elected representative.

Of course information concerning these proceedings soon reached Sir Archibald Campbell, the newly appointed lieutenant governor of New Brunswick. Early in September he had notified Governor Smith of his "surprise and regret" that some citizens of Maine had crossed the boundary and taken possession of a

¹ The government of the United States.

² *Resolves of Maine*, II, 478.

part of the territory in dispute between the two governments, and suggested the recall of these persons and the subjection of their conduct to judicial inquiry. Because of his official position in the province he claimed the "undoubted" right "to seize the persons of offenders and deal with them according to the laws" of New Brunswick. Without waiting for a reply from Governor Smith, the lieutenant governor, with a small military force and some New Brunswick civil officers, made his way up the St. John from Fredericton, and on Sunday, September 25th, orders were circulated among the inhabitants in the Madawaska country to assemble at the Madawaska chapel, on the north side of the St. John River. In the afternoon of that day, Daniel Savage, one of the selectmen, and Jesse Wheelock, the town clerk, were arrested for participation in the organization of the town of Madawaska; and it was the declared purpose of the force thus assembled to arrest all others who had voted in the meetings recently held.¹

John Baker, who has left on record this information, again comes before us in the unfolding of events connected with the appearance of Sir Archibald Campbell in this visit to the Madawaska country. Mr. Baker was present at the first of these meetings and in all probability voted with others. What follows is a slightly abbreviated account of what Baker says occurred on the day following the arrest of Savage and Wheelock.

"About twelve o'clock, on Monday September 26th, I discovered about twenty canoes coming up the St. John, apparently in great haste, with one or more men in each. These landed on the north shore at my mills, and at a neighbor's landing just below. I retreated to a distance and watched their movements. After examining my mills, they proceeded to my dwelling house, where they posted sentinels armed with muskets. A part proceeded to other houses and searched them also, and thence returned to my house. While I remained in the woods, my wife came to me and informed me that Barnabas Hunnewell, Daniel Bean and several

¹ *Resolves of Maine*, II, 480.

French settlers were held as prisoners by the soldiers then at my house; that Mr. Miller, the high sheriff of the Province of New Brunswick, had searched the house throughout, and afterwards directed her to advise me to surrender myself to the British authorities; and that if I would go to Simon Hebert's¹ house, where the governor and attorney general of the province then were, and give bail for my appearance at the court in Fredericton, I should be released; that it was in vain for me to think of keeping out of the way, as they intended to garrison the territory and force me into a compliance to the British authorities.

“While I was holding this conversation with my wife on Monday afternoon, I discovered a horse-boat coming up the river with about fifty armed men on board. These landed at my house, and I was informed that a detachment of them were to proceed up the river to the upper settlement, for the purpose of arresting all other persons who had taken part in the town meetings. Upon this information I set off, about sunset for the upper settlements, and after proceeding through the woods a distance of two miles, I came to the river St. John, heard the discharge of muskets below, and supposed the soldiers to be drilling. I reached the upper settlements about three of the clock on Tuesday morning, gave notice of the approaching danger, and all the male inhabitants but six, who subsequently fled, retreated into the woods with me. In the afternoon of that day, we saw the armed party come up the river. Finding ourselves pursued, we retreated further into the woods. This party, as I was informed afterwards by the females who remained at the houses, was divided into detachments which severally scoured the banks of the river on both the north and south side, in search of us. On Wednesday morning following, we came back to one of the houses, and saw the armed force returning down the river; but apprehending that an ambush might be laid for us, we retreated again that night farther into the woods, and on Thursday ventured back to the river. We then met one Mrs. Bartlett, whom we had sent from

¹ In Baker's deposition the name is Herbert.

the upper settlement on the preceding Tuesday, and were informed by her that she had been at my house where the British soldiers were on Wednesday, having four American prisoners and some French settlers; that the officers of the armed force declared their determination to garrison the settlements, and take us prisoners whenever we should make our appearance; and instructed the French settlers to disregard everything done by the American officers. I have not been at my house, nor with my family, since, apprehending that I should be forthwith imprisoned if taken by our pursuers. Under this state of affairs, I proceeded forthwith on Thursday on my way to Portland, where I arrived this twelfth day of October, 1831."¹

Other information concerning these Madawaska arrests was sent to the state authorities by two of the prisoners, Savage and Wheelock, in a joint communication addressed to Roscoe G. Green, secretary of state. The letter was commenced at Madawaska on September 28th, and completed on the 30th, when the prisoners were descending the St. John on their way to Fredericton, with Barnabas Hunnewell and Daniel Bean, as fellow prisoners.² Of these, Wheelock, Savage and Hunnewell were arraigned before the supreme court of New Brunswick and sentenced to pay a fine of fifty pounds, and to be imprisoned three months.³

When, on October 10, 1831, Governor Smith replied to Lieutenant Governor Campbell's communication of September 13th, informing him that some citizens from Maine had "crossed the boundary line actually existing between the two countries and taken possession of part of the territory still in dispute," the governor stated that this was the only authentic information he had received, and expressed regret that any people from the state should have committed acts of the kind described in the lieutenant governor's letter. As the names of the aggressors, and the particular nature and circumstances of the transaction had not been

¹*Resolves of Maine*, II, 480, 481.

²*Ib.*, II, 475, 476.

³*Ib.*, II, 485.

made known to him, he was unable to account for or explain the acts, and so, if possible, to prevent them. Two gentlemen,¹ however, he said, had been appointed, by authority of the Legislature of Maine, to ascertain the number of persons settled on the public lands, north of the line running west from the monument, the manner in which they respectively held the same, and to report all the facts, thus enabling the state to adopt some mode of quieting the settlers in their possessions. These gentlemen, he said, had discharged the duties thus laid upon them, but no formal report of their proceedings had been received. "It is not to be presumed," he added, "that they are the persons to whom allusion is made in your excellency's letter." With this suggestion, Governor Smith turned to the last paragraph in the letter of the lieutenant governor of New Brunswick, in which the latter asserted his imperative duty "to maintain inviolate the existing boundaries" of the province committed to his charge; and he reminded Sir Alexander that if by "existing boundaries" he meant the boundaries established by the treaty of 1783, it was not, and never had been, the intention of the government of Maine to assert any claim or jurisdiction beyond that line. If, however, a line recently designated, commencing at Mars Hill, was intended, the attention of the lieutenant governor was called to the fact that such a line had never been recognized by Maine as the limit of its territory and jurisdiction. As this, however, was a matter now pending between the United States and Great Britain, the governor said he would forward the letter to the president; at the same time he assured his excellency that it would be his endeavor to prevent the occurrence of anything that would embarrass negotiations or disturb the harmony existing between the two governments.²

By this time Governor Smith had received a letter addressed by the British chargé d'affaires³ in Washington to Mr. Livingston,

¹ John G. Deane and Edward Kavanagh. *Resolves of Maine*, II, 474.

² *Ib.*, II, 470-472.

³ Lieutenant Governor Campbell, of New Brunswick, had conveyed early

informing him of an attempt on the part of the authorities in Maine to exercise jurisdiction over a part of the disputed territory, making mention of an order, "issued by a justice of the peace for the County of Penobscot to the inhabitants of the town of Madawaska, to assemble for the purpose of choosing municipal officers." In the letter no mention was made of the arrest of Wheelock and others, and there is nothing in it to indicate that the British chargé d'affaires had received information of the proceedings that followed the call to assemble.¹ In his note of October 5th, Mr. Livingston, by request of the president, asked Governor Smith for such information as he possessed concerning the matters of which the British chargé d'affaires had complained, and expressed the president's most earnest wish that no measures should be taken by the state authorities that would embarrass the government of the United States in its contemplated handling of boundary matters at the ensuing session of Congress. The letter was a serious appeal to the governor "to avoid, under these circumstances, any unnecessary exercise of authority over the contested ground, and to repress, as far as lies in your power, all such acts as may endanger the quiet of the bordering territory."²

Replying to this letter on October 12th, Governor Smith transmitted a copy of a legislative resolve in relation to persons settled on the public lands without title, as already mentioned in his letter of October 10th, adding, "This is the only measure adopted

information concerning matters at Madawaska to Mr. Bankhead, who transmitted the intelligence to Lord Palmerston, saying that he had submitted the complaint of the lieutenant governor to the government of the United States, adding, "I trust that such a communication will be made to the authorities of Maine, as shall prevent the recurrence of such irregularities until the question of disputed territory shall be finally settled. The general government is most anxious to avoid the slightest collision between the State of Maine and his Majesty's provincial officers; and Mr. Livingston expressed his regret that any occasion had been afforded by the State of Maine to embarrass the harmony and good will subsisting between the two countries." Urquhart, *Exposition of the Boundary Differences*, 32.

¹*Resolves of Maine*, II, 495, 496.

²*Ib.*, II, 472, 473.

by this department, that is known to have any relation to the disputed territory." In close connection with this statement, the governor adds: "An act was passed by the Legislature of the State, at their last session, to incorporate the town of Madawaska, which is bounded in part by the line of the State. By this act, and by some others, I considered that it was intended by the Legislature to assert the claim of this State to jurisdiction over that portion of the territory which they knew to be within the limits of Maine; and that it was not to be carried into effect until circumstances should render it proper and expedient. The measure that is said to have been adopted by the inhabitants of that territory, of voluntarily organizing themselves into a corporation, was unexpected by me, and done without my knowledge. The only information received at this department in relation to this last mentioned transaction, is contained in a letter purporting to be signed by Jesse Wheelock and Daniel Savage, who are personally unknown to me; but as their statement is corroborated by a letter from a gentleman at Houlton it is believed to be substantially correct."¹

Many years later, an ex-governor² of Maine, referring to this letter in a paper on the northeastern boundary before the Maine Historical Society, said that down to this period in the boundary controversy, he could find, with perhaps a single exception, "no blot on the history of this State, nothing to be ashamed of, nothing to hide the head for, but a constant exhibition of elevated and dignified patriotism—a proper regard for the integrity and honor of the Commonwealth. But after this succeeds a term which we might well desire to have expunged from our annals." In this connection he cited Governor Smith's words in this letter concerning the act of the Legislature incorporating the town of Madawaska, and his understanding with reference to the action contemplated by the Legislature, adding, "What a spectacle is

¹*Resolves of Maine*, II, 474. John Baker arrived in Portland on October 2, 1831, but there is no evidence that he saw the governor on that day.

²Hon. Israel Washburn.

here! The Secretary of State of the United States had written the Governor of Maine a sharp letter, reproving the State, in effect, for its independent and proper action. And the Chief Magistrate, who but a few months before had been so earnest, who had approved an act to incorporate the town, when the people thereof, in good faith, supposing the act of the Legislature meant what it said—as indeed, it did, as everybody conversant with its history well knew—went to work and in conformity to its provisions organized the town—instead of planting himself firmly upon the act of the Legislature and the doings of his people starts back, like Fear in Collins' Ode, 'E'en at the sound himself had made.'''¹

Of course Governor Smith might have taken a different attitude in his correspondence with the secretary of state. There were others than Governor Washburn who thought he should, and that the Maine executive was lacking in courage. There is no evidence, however, that anything like fear controlled Governor Smith's actions at this time, or at any time. His high character and his evident purpose faithfully and honorably to serve the state in a difficult situation are against any such interpretation of his conduct in relation to the national government. It is well known that in the Legislature, at the time of the Madawaska legislation, there was a difference of opinion with reference to it. There were those who looked upon such legislation as a call to action upon the border. Others regarded it as a continued assertion of the rights of the state to that portion of the disputed territory, believing that no necessity existed for carrying the Madawaska act into effect forcibly until the circumstances were favorable. This last was the view held by Governor Smith, and his view seems to have received practical vindication at the following state election, when for the third time he was elected governor of Maine.

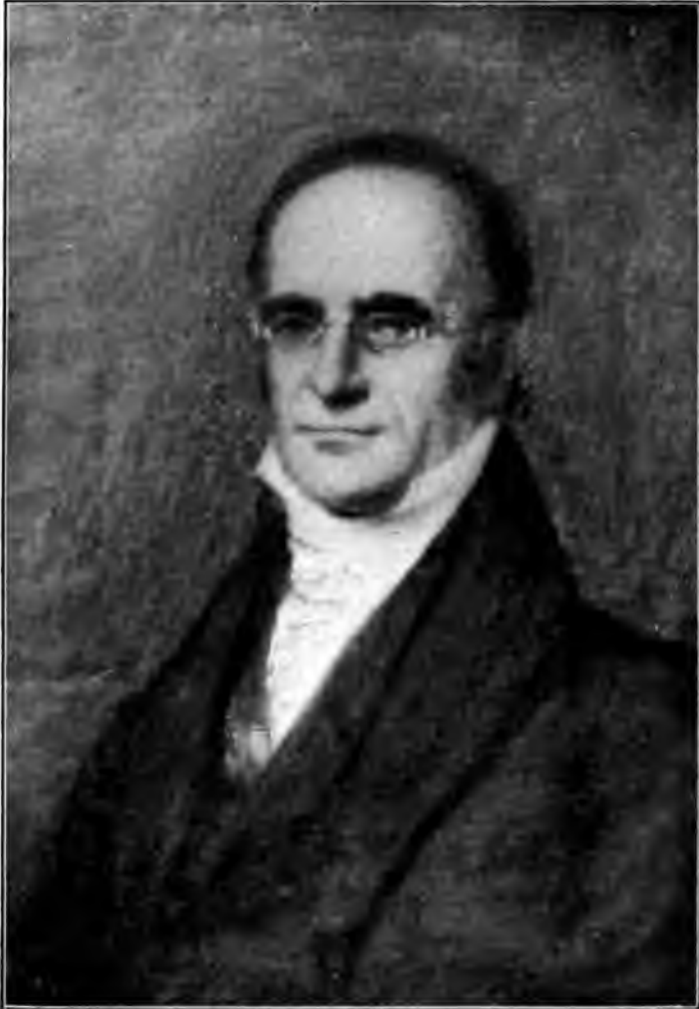
While, therefore, the action of the inhabitants of Madawaska was unexpected by the governor, as he stated in his letter to the

¹ *Maine Historical Society Coll.*, First Series, VIII, 53, 54.

secretary of state, nevertheless, as the inhabitants had acted on territory which he believed was within the known limits of the State of Maine, he now took the ground that they were entitled to the aid and protection of the state. Accordingly, the information concerning conditions at Madawaska which Governor Smith had received from Mr. Baker was at once transmitted to the secretary of state at Washington. The information furnished proof, he said, that a number of the citizens of Maine, assembled at the south side of the St. John River, and on territory known to be within the limits of the state, had proceeded to organize themselves, and to transact other business, as authorized by the laws and constitution of the state. This led to the arrest of Wheelock and others by a military force accompanied by the lieutenant governor of New Brunswick and other officials, and the removal of the prisoners to Fredericton. Others, in order to escape arrest, had abandoned their homes and fled to the woods for concealment. In their behalf, under such hard circumstances, the governor asked the aid of the national government, urging the adoption of measures to procure the release of the imprisoned, and to protect the state from foreign invasion; expressing at the same time full confidence that such measures as the urgency of the occasion required would seasonably be adopted. In the meantime, he said, it would be his endeavor to have the state prepared to exert the means within his power, which would be necessary for the protection and the security of her citizens.¹

On receiving this letter from Governor Smith, dated October 13, 1831, Secretary Livingston, in a letter to Mr. Bankhead, the British chargé d'affaires at Washington, citing two inclosed extracts from the governor's letter of October 12th, and which already have been cited, remarked: "By the first, you will perceive that the election of town officers in the settlement of Madawaska, of which complaint was made in the papers enclosed in your letter, were made under color of a general law, which was not intended by either the executive or legislative authority of

¹*Resolves of Maine*, II, 477, 478.



SAMUEL E. SMITH.

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the State, to be executed in that settlement, and that the whole was the work of inconsiderate individuals. By the second extract, it will appear that the individuals, said to have been prominent in setting up the authority of the State, have been arrested by order of the lieutenant governor of the province of New Brunswick, and were on their way to be imprisoned at Fredericton. The innovation on the existing state of things in the disputed territory, being distinctly disavowed by the executive authority of the State, no act of authority or exercise of jurisdiction having followed the election, I would respectfully suggest the propriety of your recommending to the Lieutenant Governor of New Brunswick the release of the prisoners who were arrested for exercising this act of authority in the territory mutually claimed by the two nations, contrary to the understanding between the two governments."¹

It will at once be seen that in this statement to the British representative in Washington, Secretary of State Livingston, in minimizing the action of the inhabitants of Madawaska, made a very liberal use of Governor Smith's explanation in his letter of October 12th. The governor's letter of October 13th, with which were transmitted the depositions of John Baker and Phineas R. Harford, did not sustain the representations Mr. Livingston had made to Mr. Bankhead; and on October 21st, in a sharp note to Governor Smith, Mr. Livingston indicated his own and the president's displeasure at the information conveyed. At the outset the secretary brought against Maine the charge of a clear breach of good faith in not adhering to arrangements made by the two countries and communicated to the governor, by which it was distinctly understood that there was to be no exercise of state authority in the parts of the disputed territory actually held by the British. The first departure from this understanding, he said, had proceeded from the persons arrested at Madawaska. The president, under any such circumstances, could not look upon the presence of British civil and military officials at Mada-

¹*Resolves of Maine*, II, 493-495.

waska as an "invasion." As to those "ill-advised persons" who had been the cause of these new troubles on the border, proper measures would be taken to procure their release; but the governor was reminded of the president's expectation that he would use his influence to prevent any further collision with the British authorities, in the firm persuasion that the wisdom of Congress would direct such ultimate measures, as would bring the controversy to a close, consistent with the dignity of the United States and, particularly, of the states interested in the question.¹

As has already appeared, the relations of the state authorities to the national government during the boundary controversy had not been altogether pleasant at times. Here, nearer to the border, there was a feeling that those in remote seats of authority were indifferent to concerns with reference to which the people of Maine had very deep convictions. Mr. Livingston's language gave evidence of restraint, and could not be considered otherwise than as meaning more than was expressed. Governor Smith's reply, which was not made until November 10th, also indicated restraint, opening with a reference to measures that had been adopted by the council to prevent, if possible, any further collision between citizens of Maine and the authorities of New Brunswick, until the meeting of Congress, when action was expected that would bring the long controversy to a close. The governor then referred to Hunnewell, Wheelock and Savage, who, since his last letter, had been arraigned before the supreme court of New Brunswick and sentenced to pay a fine of fifty pounds and to be imprisoned three months. They were now in jail at Fredericton in execution of that sentence. He accordingly renewed his request for the aid and protection of the United States in their behalf, reminding the secretary that these men had been imprisoned "by a foreign power in violation of the sovereignty of this State."

But what of those who had left their homes at Madawaska for fear of arrest by the British authorities on account of their participation in the Madawaska meetings? Could they return safely to

¹*Resolves of Maine*, II, 483, 484.


those homes? It was understood that warrants had been issued for their arrest, and should such arrests follow, the governor expressed apprehension that it would be impossible longer to restrain the just indignation of their fellow citizens throughout the state. Unquestionably Governor Smith, in these words, accurately indicated the public feeling in Maine with reference to the arrest and imprisonment of the parties mentioned, and the fear that other arrests would follow, unless the national government should interpose in their behalf.

Concerning the position relied upon by the British authorities,—that at the time of the convention for submitting to arbitration the jurisdiction and possession *de facto* of the disputed territory was with the Province of New Brunswick, as was asserted by the secretary of state,—an emphatic denial was made by Governor Smith on behalf of the State of Maine, excepting only a small settlement near the mouth of the Madawaska River. In order to show the limited and uncertain nature of such jurisdiction and possession by the provincial authorities the governor called attention to an inclosed letter¹ by John G. Deane, an agent appointed by the state to obtain information relating to this territory. From the facts therein stated it appeared, he said, that the actual possession and jurisdiction of Massachusetts since 1792, and Maine since her separation, had been greatly more extensive and continued than that of the provincial government. “After the true St. Croix and its sources were ascertained in 1798, the British ceased to exercise any acts of jurisdiction over the settlement at Madawaska or other parts of the territory since disputed; and for twenty years, until the commencement of the controversy respecting the boundaries, their jurisdiction was not resumed. But since that time, and subsequently to 1827, when it is supposed the arrangement before alluded to was made, the British for the first time have interfered with the settlers on the Aroostook, and in their last excursion proceeded to the settlement to arrest the people there, many miles above the Madawaska, and further

¹ *Resolves of Maine*, II, 488–492.

than they had before extended their jurisdiction." These facts, the governor said, were sufficient to show that the arrangement for preserving the existing state of things to which Mr. Livingston referred, had often been violated by the British authorities. They also showed the necessity of exertion on the part of the people of Maine to resist the progress of these continued encroachments, and prevent their being afterwards used by their opponents as evidence of their actual possession of the territory.

The governor, also, called the attention of Mr. Livingston to the continued activity of the New Brunswick authorities in the disputed country, showing that the recent conduct of the government of New Brunswick on this side of the line (designated by the king of the Netherlands as in his opinion a suitable boundary) indicated a practical rejection of the award. Maine's interest in the result of this controversy, therefore, added the governor, arises not more from the value of the territory in dispute, than from a desire that the rights guaranteed other by the constitution of the United States may be preserved inviolate. It was from a sense of duty, accordingly, that the governor of the state had governed his actions in his relations to the general government. "I trust," he added, "this State has never departed from the deep respect and constitutional deference which are always due from each member of the Confederation to the paternal authority of the government of the United States. During the whole progress of this negotiation, Maine has continued respectfully but decidedly to remonstrate against proceedings directly involving her rights and interests as a State, and to which her assent was never requested: she contends that the United States have not the power by the Federal Constitution to alienate, by negotiation or otherwise, any portion of the territory of a State without the consent of such State: she opposed the submission of the question to arbitration: she has communicated to the President her conviction that the award of the Arbitrator was not binding upon this State or upon the United States, and has protested against its acceptance. She has exerted all the means in her power for the preser-



vation of her rights and territory; and if, after all, the wisdom of Congress shall decide that the interests of the nation require the extraordinary opinion and advice of the King of the Netherlands to be carried into effect, from necessity alone will the people of this State be compelled to submit."¹

With these firm, yet judicious words, Governor Smith defended himself from the personal reflections contained in the letter of the secretary of state, and vindicated the position which Maine all along had maintained in her endeavor to hold fast to her territory and to her constitutional rights. It was no time for words of resentment and indignant denial. Regarding solely the interests committed to him by the state of which he was the chief magistrate, the governor presented his case in such a way as to give the State of Maine, in national councils with reference to the boundary, a place it had not previously secured.

The reply of the secretary of state, dated November 16, 1831, was in words that gave evidence of the reasonableness and forcefulness of the governor's letter. It should be given in full. "I had the honor this morning to receive your Excellency's letter of the 10th instant, with its inclosures, all which were immediately submitted to the President, who directs me to say that he learns with great satisfaction that a meeting of the Executive Council has been held, and measures adopted to prevent, if possible, any further collision between our citizens and the authorities of New Brunswick until the meeting of Congress. This disposition justifies the confidence he felt in the moderation and wisdom of the government and people of Maine, and he instructs me to add the expression of his belief that by a perseverance in the same course, the end so desirable to all, may by the intervention of Congress be attained; that of bringing the controversy with respect to the north-eastern boundary to such a close as may consist with the interests of the United States and the rights of the State of Maine. In the meantime measures have been taken which it is expected will procure the release of the prisoners confined at Fredericton."²

¹ *Resolves of Maine*, II, 485-488.

² *Ib.*, II, 492, 493.

In his annual message to Congress, December 6, 1831, President Jackson expressed the satisfaction he had in saying that suggestions made by his direction to the chargé d'affaires of the British government in Washington had resulted in securing the release of the prisoners at Fredericton. In obedience to a resolution of the Senate of the United States, calling for all information in the possession of the executive "relative to the capture, abduction and imprisonment of American citizens" by the New Brunswick authorities, the president, December 13th, transmitted the documents as requested. These, having appeared as a Senate Document, were printed in Maine by the Legislature and in at least one of the Maine newspapers.¹

In his annual message to the Maine Legislature, January 9, 1832, Governor Smith referred to the arrest of Maine citizens at Madawaska made by the New Brunswick authorities, and to the measures adopted by the state for securing their release through the department of state at Washington. As these measures were successful, further proceedings on the part of the State of Maine² were rendered unnecessary. Also, in his message, Governor Smith called attention at some length to Maine's relations to the national government in the settlement of the boundary controversy. He was aware, he said, that the opinion was generally and perhaps justly entertained, that if, before the negotiations had commenced, a different course had been adopted by the state, questions that had endangered the territorial integrity of Maine would not have arisen. However that might be, as matters stood at present, it was evident that much embarrassment would follow the adoption of measures for enforcing the jurisdiction of the state over the settlement at Madawaska. Such measures would require the establishment of a military force at that point, thus bringing the state not only into collision with Great Britain, but also into opposition to the

¹ The documents accompanied the governor's message of January 9, 1832. The *Eastern Argus*, Portland, commenced their publication on the following day.

² *Resolves of Maine*, II, 333, 334.

expressed wishes of the national government. Such a condition of affairs could not be expected to have a favorable effect upon the result of the controversy. He believed, therefore, it was both necessary and expedient for the state to rely upon the national government for the enforcement of its rights. When we appeal to that government to protect our territory against invasion, he said, "we ask not a favor, which may be granted or withheld, but claim a right which the constitution authorizes the state to demand."¹

That part of the governor's message which related to the boundary was referred to a joint special committee of the Legislature. William Pitt Fessenden was a member of the Legislature at this time. Writing at Augusta, January 13, 1832, to Charles S. Daveis, of Portland, he gave this information: "The committees are now appointed, and you will see that the boundary business is referred to a committee of thirteen. They have appointed a sub-committee. The character of a majority of the large committee led me to fear that no very strong measures would be adopted or recommended, but I am informed by one of our friends, who is a member of it, that he has proposed divers measures agreed upon between him and myself, and that he is so well seconded by us and two of the other side that he hopes to carry them all, altho' some opposition is met with from a few who fear it may affect the prospects of the Jacksonians, if very vigorous measures are adopted. This information is very gratifying to me, and will be so, doubtless, to you. I am the more particularly pleased, since the message of the governor and some outdoor information had satisfied me that he wished to hush the matter up as quietly as possible. I think now that *fear* will compel the majority to come up to the work. If they do not, there are some determined men among us who will not hesitate to tell all the truth they know upon the subject. I think a few spirited touches in the papers from the right source might do good."²

¹ *Resolves of Maine*, II, 232, 233.

² Manuscript in the library of the Maine Historical Society.

Evidently the "spirited touches in the papers" were not needed. The committee reported on the following day. In the report¹ conditions were considered with reference to future action. While the people of Maine, it was insisted, rightly looked to the national government for that protection which the federal constitution guarantees to each state in the Union, they also looked to the Legislature of Maine; and the committee reported a series of resolves, in which the position of the state with reference to the boundary was so vigorously presented as to meet general approval. The resolves as adopted were as follows:

"Resolved, That the constitution of the United States does not invest the general government with unlimited and absolute powers, but confers only a special and modified sovereignty, without authority to cede to a foreign power any portion of territory belonging to a State, without its consent.

"Resolved, That if there is an attribute of the State sovereignty which is unqualified and undeniable, it is the right of jurisdiction to the utmost limits of State territory; and if a single obligation under the constitution rests upon the confederacy, it is to guaranty [*sic*] the integrity of this territory to the quiet and undisturbed enjoyment of the States.

"Resolved, That the doings of the King of Holland, on the subject of the boundary between the United States and Great Britain are not a decision of the question submitted to the King of the Netherlands; and that his recommendation of a suitable or convenient line of boundary is not obligatory upon the parties to the submission.

"Resolved, That this State protests against the adoption, by the government of the United States, of the line of boundary recommended by the King of Holland as a suitable boundary between Great Britain and the United States; inasmuch as it will be a violation of the rights of Maine,—rights acknowledged and insisted upon by the general government, and will be a precedent, which endangers the integrity, as well as the independence, of every State in the Union.

"Resolved, That the Governor, with advice of the Council, be authorised to appoint a competent agent, whose duty it shall be, as soon as may be, to repair to the city of Washington and deliver to the President of the United States a copy of the preceding report, and these resolutions, with a request that he will lay the same before the Senate of the United States; and also deliver a copy to the Vice President, to each of the heads of departments, and to each member of the Senate, and to our Representatives in Congress.

¹ The report was signed by John L. Megquier, T. Boutelle, William Emerson, Reuel Williams, Jeremiah O'Brien, Nathan Clifford, Joseph M. Gerrish, John D. McCrate, Charles Dummer, James Steele, Charles Jarvis. *Resolves of Maine*, II, 342.

"Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their best efforts to prevent our State from being dismembered, our territory alienated, and our just rights prostrated, by the adoption of a *new* line for our northeastern boundary, as recommended by the King of Holland.

"Resolved, That the agent to be appointed by the Governor and Council be instructed to co-operate with our Senators and Representatives in advocating and enforcing the principles advanced, and positions taken, in the foregoing resolutions, and in supporting all such measures as shall be deemed best calculated to preserve the integrity of our State, and prevent any portion of our territory and citizens from being transferred to a foreign power."¹

These resolutions were approved January 19th, and on the 24th additional action was taken by the Legislature of Maine, requesting the co-operation of the Commonwealth of Massachusetts (as joint owner with Maine of the territory in question) in such measures as were best calculated to prevent the adoption of the line recommended by the king of the Netherlands. Such action was taken, and the Legislature instructed the members of the Massachusetts delegation in Congress to use their influence against an acceptance of the arbitrator's award by the national government.²

Evidently these resolves were framed, and this action was taken, because of a well-grounded expectation among the members of the Legislature that the discussion of boundary matters was likely to be transferred to Washington. It was important, therefore, that the government of the United States, the members of Congress, and especially the senators and representatives from Maine in both houses of that body, should have before them such an expression of the views of the people of Maine, who were so strongly interested in any added efforts to settle the boundary controversy.

In accordance with the action thus taken, the governor appointed Judge William Pitt Preble, late minister to The Hague, as the agent of the state in boundary considerations at the national capital.

¹*Resolves of Maine*, II, 343, 344.

²Report of committee, 24, 25.

CHAPTER IX.

THE KING'S AWARD REJECTED.

IN accordance with his instructions Judge Preble proceeded to Washington without delay, reaching the national capital February 2, 1832. On the following morning he called on President Jackson, and delivered to him the report and resolutions adopted by the Legislature of Maine. He also at once entered into close relations with the Maine senators and representatives in the Congress of the United States, and was informed that among the papers concerning boundary matters recently laid before the Senate was a letter from Mr. Bankhead, the British chargé d'affaires, to Mr. Livingston, insisting, by order of his government, that the award of the king of the Netherlands was binding on the United States, and calling on its government to carry the arbitrator's decision into effect. Shortly after, he had a long conversation with Mr. Tazewell, chairman of the senate committee on foreign relations, who maintained that Maine, in resisting the recommendation of the king of the Netherlands, was placing her own interests in jeopardy; that the decision of the arbitrator was far more favorable to the rights of Maine than he had expected; and that, if the decision were set aside, not only would the peace of the country be endangered, but the embarrassments arising out of the British possession and pretensions, with the hostile attitude of the people of New Brunswick, would subject Maine to great and constant inconvenience and vexation. "He was ready to fight if Maine said so," but he deemed it best "to pause and weigh the consequences." On one point he was fully convinced, "that on the score of policy, and with an eye to her own peace and her own best interests," Maine would act more wisely by acquiescing in the award than by con-

tending farther. "We cannot get rid of the fact that the arbiter, we agreed to, has pronounced against us."¹

This information Judge Preble forwarded to Governor Smith in a confidential letter dated February 15th. On that evening he met the members of the Maine delegation in Congress for the consideration of Maine's prospects with reference to boundary matters as viewed in Washington. In a report of the meeting to Governor Smith, written very early in the morning of the 16th, Judge Preble stated that all the members concurred with him in the apprehension that ultimately, on the promise of an indemnity from the government of the United States, Maine would be compelled to acquiesce in the arbitrator's award. "We do not despair altogether," he said; "yet such are our fears, and I deem it infidelity to the interests of the State for me to conceal them from you." He also reported to the governor, as already to the Maine delegation, a conversation he had held with the secretary of state, Mr. Livingston, in which the latter referred to the embarrassment of the national government because of the present posture of affairs relating to the northeastern boundary. The administration, he said, was anxious to save the rights of Maine and preserve what was thought to be the honor of the country. Accordingly, without undertaking to say whether Maine was right or wrong in the position she had taken, the president was ready to propose that Maine for an indemnity should cede to the United States her claim and jurisdiction over the territory northerly and easterly of the line recommended by the king of the Netherlands, in order that the United States might be enabled to make such an arrangement with Great Britain for bringing the boundary controversy to an end as would best comport with the interests and honor of the United States, Maine to authorize her agent to enter into negotiation with such person or persons designated by the president for the cession of jurisdiction and the settlement of the indemnity. The agreement, if entered into, was to be sub-

¹*Resolves of Maine*, II, 450, 451.

ject to ratification both on the part of Maine and of the United States.¹

The views of the Maine delegation were sought by Judge Preble with reference to this proposal. With the exception of Mr. Evans, all were in favor of recommending it to the favorable consideration of the Legislature of Maine; and on February 16th, the majority of the delegation, in a written statement sent to Judge Preble, stated their position as follows: "It is not necessary for us to enlarge upon topics on which all parties in Maine are agreed. The resolutions adopted by both branches of the Legislature of the State, and approved by the Governor are entitled to and have received our respectful attention, and we concur fully in all the opinions and sentiments they express. It is our settled conviction that Maine ought not to consent to any dismemberment of her territory, to be made merely by force of the late pretended award of the king of the Netherlands; and we do not believe that she will ever acquiesce in any violation of her constitutional rights as a sovereign State, or as a member of this confederacy; and if, in the proposal now submitted to us there were the possibility of a construction, which would yield even the smallest particle of those rights, we would at once and without hesitation repel the offer, however advantageous to her in a pecuniary view, and however desirable its acceptance might be to the general Government. But considering as we do that the very proposition puts us upon high ground, that it may be considered as yielding the pretensions heretofore advanced that Maine could have no voice in the disposal of her own territory, that it tacitly recognizes the rights of our State, and by implication acknowledges the justice of the view which its constituted authorities have constantly taken, we are at liberty to turn our attention to its political bearing upon Maine and upon the relations of the United States with foreign countries."

After an allusion to the possibility that the action of the Senate of the United States with reference to the award of the king of

¹*Resolves of Maine*, II, 452.



GEORGE EVANS.

SIAMHUKU TUNNUS

the Netherlands might be adverse to the rights and interests of Maine, and productive of consequences which might for years place her in a position, in relation to her sister states, that would lead to discord and bitterness, the majority members of the delegation closed their written statement with these words: "We are therefore of the opinion that the proposition of the Executive of the United States ought to be met by the State of Maine in the same friendly and conciliatory spirit in which it has been made, and we are satisfied that in so doing all the interests of Maine will be materially promoted."¹

Mr. Evans, however, was not in agreement with the majority of the delegation as to the course which should be pursued. In his judgment matters concerning the boundary should not come up in this informal way. If the general government was embarrassed in its proceedings, and desired the assent of Maine to enable it to act freely, it should formally and officially signify its wishes to the government of Maine, accompanied, perhaps, by propositions on its part for deliberation by the State Legislature. "The decided measures which Maine has already adopted, seem to me," he said, "to preclude any advances or propositions coming from that quarter. She stands upon her rights, and has no concessions to make. They who wish them should take the first steps to procure them." He would not have the State of Maine, therefore, "propose to the general government a cession of territory, or assent to the line for an indemnity to be received, until the government of the United States have recognized the rights of Maine and requested that assent as the basis of its action."² Undoubtedly Mr. Evans had suggested the best procedure in ordinary circumstances; but Judge Preble and the associates of Mr. Evans in Washington were not influenced by these considerations. Maine had made no advances for a compromise in order to secure a settlement of boundary differences. The proposal was an in-

¹*Resolves of Maine*, II, 457-459. The signers were John Anderson, Rufus McIntire, Leo Jarvis, Cornelius Holland, James Bates, Edward Kavanagh.

² *Ib.*, II, 459-461.

formal one, it was true, but it had come from the president of the United States; it recognized the rights of Maine to the territory north of the river St. John and east of the river St. Francis, and the state would be recompensed for its loss of territory by the payment of a suitable indemnity. Was not, then, the proposal of the president worthy of consideration by the governor and Legislature of Maine? This was Judge Preble's belief; and his own letters to the governor, and the statements of the Maine congressional delegation in Washington, were hastened to their destination.¹

These communications the governor confidentially laid before the members of the Legislature on February 22nd, and asked for their consideration. They contained, he said, a proposition from the general government for a settlement of the boundary controversy by negotiation, and he stated the proposal already mentioned, and the views of the agent and the Maine delegation in Congress concerning it. "The decided and unanimous opinion of our Agent and the united delegation of the State in Congress,"² he said, "cannot fail to be received with great deference, and under existing circumstances it is believed that an arrangement of the kind proposed will not, in any respect, compromise the honor of the State, or operate injuriously to her interest. In a pecuniary point of view, she will be amply remunerated for the loss sustained, and the principle for which she has uniformly contended, that the United States have not constitutional power to alienate any portion of the territory of the State, without its consent, will not be abandoned. The adjustment of the controversy will also relieve the United States from much embarrassment in their relations with Great Britain, and terminate those collisions with the British authorities, which if continued would inevitably prevent the settlement of the territory and endanger the peace of the country."³ In closing his message the governor suggested prompt

¹*Resolves of Maine*, II, 454-456.

²The minority views of Mr. Evans were not mentioned.

³*Resolves of Maine*, II, 449.

action after careful consideration, and that also the Commonwealth of Massachusetts should be requested to unite in the proposed arrangement, if upon consideration its acceptance should be deemed expedient.

Following the reading of the message the Senate went into secret session, as requested by the governor, and the papers were referred to Messrs. Boutelle, Megquier, Emerson, Thayer and Sweat. On the following day the House of Representatives had a secret session, at which the consideration of the governor's message, and the papers accompanying it, were referred to Messrs. Clifford, Gerrish, McCrate, Williams, Steele, Jarvis, O'Brien, Bronson, Knowlton and Miller. Naturally it very soon became known in Augusta that both the Senate and the House of Representatives were holding secret sessions, with matters relating to the boundary under discussion. On March 3rd, adding to common rumors, the *Maine Daily Journal* (published in Augusta) laid before its readers a communication signed "Truth," introduced by an editorial note: "We found the following communication in our letter box, in a handwriting unknown to us. Of course we can say nothing of its authenticity, but as it may afford some clue to the secret proceedings of the Legislature on a subject in which the people feel a deep interest, we venture to publish." The communication opened with these words: "Suppose the Legislature of Maine, in secret session, being bound by the solemnity of an oath, should vote to *sell the whole or any part of the State to the British government*, and thereby become British subjects, would that oath be binding on those who do not agree to the *bargain or sale*; or ought they to speak *and warn the people of their danger* before it is too late?" Other questions followed. "Supposing such a question before the Legislature and under consideration in secret session, would it be proper for the party being the majority to hold a party caucus and admit gentlemen *who are not members of the Legislature*, and then and there discuss the propriety of such questions? Suppose in secret session the whole number of votes to have been 149, 80 of whom were in

favor of selling a part of our State to Great Britain and 69 against it, ought not the 69 to take abholdst and make the *plot* known to their constituents, or are they *bound* by their oath to be GAGGED on such a momentous question? These, Messrs. Editors, are questions of deep interest, and I wish you would give me your opinion on them."

Such an opinion the editors declined to give. "We know not," was the answer, "that such a case has happened. We only know that distinguished Jackson leaders are here from distant parts of the State; that the House sat in secret on Thursday afternoon until half-past ten o'clock at night; that the Senate again yesterday sat forenoon and afternoon in secret. We only ask, what does all this mean? Are we to give up a part of our State by some secret arrangement which will not bear the light? Who calls on us for such a sacrifice—such a humiliation? And so immediately, too, after sending a special agent to Washington with a solemn protest!"

Of course, as has already appeared, the proposal before the Legislature had no reference to the sale of Maine territory to the British government. Naturally erroneous impressions were received in the aroused state of feeling among the members of the Legislature when the governor read his message and presented the papers from Washington that accompanied it. Mr. Jacob Ludden, of Canton, a member of the House, evidently received the same erroneous impression as "Truth." In a speech in the House, while the matter was under discussion, he uttered these words: "What, sir! Bargain our American territory and American citizens for land or cash? Sell our citizens without their consent? Sell them to the British, and to become subjects of a British King? Sir, history informs us of only one solitary instance in this republic where a bargain of this kind was ever attempted; and that was at West Point, in the secret session held by Benedict Arnold and Major André. Our title to the territory is indisputable. It was purchased for us. The price was blood—the blood of our fathers. And shall we, sir, like Esau, sell our birthright

for a mess of pottage? No, sir! Heaven protect us from such disgrace."¹

Other and equally startling reports soon found their way into the columns of Maine newspapers. The *Hallowell Advocate*, informing its readers that "rumors of the most painful character were afloat," and that the public mind was becoming much excited, mentioned as the most generally credited of these rumors that the president had expressed an anxious wish to acquiesce in the opinion of the Dutch king; that the state government had been made acquainted with the president's troubled thoughts; and that in order to secure legislative sanction to the proposal the hope had been held out that Congress would provide a recompense if Maine would "give up the territory quietly and make no noise about it." The *Norridgewock Journal* had not only heard a rumor that the Maine Legislature, after spending two days in secret session, had "agreed to sanction Jackson in giving up our territory," but added that there could be no doubt of its truth. "People of Maine! what think you of this procedure?" the editor eagerly asked. "Are you prepared to sanction such flagitious conduct? Are you prepared to see a large portion of the State given to a foreign government by a reckless majority of your Legislature, merely to gratify the wishes of Andrew Jackson and Martin Van Buren?"

Party feeling evidently had been stirred by these and similar editorials appearing under such headlines as "MAINE IN THE MARKET!" "OUR FELLOW CITIZENS TRANSFERRED TO A FOREIGN POWER FOR CASH OR LAND!" As early as the 6th of March, however, the *Eastern Argus*, published in Portland, had learned that "Truth" had not stated the case before the Legislature of Maine as it should have been stated. It had not been proposed, remarked the editor, that the Legislature should vote to sell the whole or any part of the state to the British government. "This statement in our apprehensions," he added, "carries false-

¹This extract appeared in the *Portland Advertiser*, March 19, 1832, under the heading "AN HONEST MAN." The editor refers to Mr. Ludden as "a Jackson member," and adds, "The man that possesses such feelings is worthy of the name American."

hood on its face. An individual State is not competent to enter into a treaty with a foreign State. The State has the authority to cede a part of its territory to the United States. Such things have been done. The State of Georgia ceded a large part of her territory to the United States for an equivalent. Virginia and other States ceded the northwestern territory, now comprising several States of the Union, to the United States. And Maine has the authority to cede part of her territory, if she pleases, to the United States."

Three days later, March 9th, the removal of the injunction of secrecy with reference to the action of the Legislature revealed the fact that the people of Maine had been misinformed concerning the proposal received from Washington. The action by the Legislature was approved by the governor March 3d. In it there was no proposal to cede any portion of the territory of Maine to Great Britain. All that the national government had suggested was that Maine, for a suitable indemnity, should cede to the United States that portion of her territory which lies northerly and easterly of the line recommended by the king of the Netherlands, so that the government of the United States, seeking a settlement of the boundary controversy, might be able to make an arrangement with Great Britain as would secure the desired result. The Legislature, it was added, regarded the proposition as emanating from a disposition upon the part of the general government to promote the interests and the peace of the nation, without violating the rights of Maine, or disregarding the obligation resting upon the whole Union to protect each state in the full enjoyment of all its territory and right of jurisdiction, and willing to meet the proposition in a like spirit in which it is believed to have been taken. It had accordingly therefore

"Resolved, That upon the appointment, by the President of the United States, of a person or persons to enter into negotiation with this State for the relinquishment, by this State to the United States, of her claim to said territory and for the cession of the jurisdiction thereof, on the one part; and for an ample indemnity therefor, on the other part, and notice thereof being communicated to the Governor, the Governor, with advice of Council, be and

he is hereby authorized and requested to appoint three Commissioners on the part and in behalf of this State, to treat with such person or persons, so appointed by the President, on the subject aforesaid; and any agreement or treaty, to be made in pursuance of this resolve, is to be submitted to the Legislature of Maine for approval or rejection; and until such agreement or treaty be so submitted to, and approved by, the Legislature of Maine, nothing herein contained shall be construed, in any way, as implying the assent of this State to the line of boundary recommended by the arbiter, or to the right of the general Government to adopt or sanction that line instead of the line described in the treaty of 1783."

The governor was also requested to communicate this action confidentially to the agent of the state in Washington, and also to the governor of the Commonwealth of Massachusetts, thus affording the mother state the opportunity of adopting such measures as she might consider expedient because of her interest in the territory mentioned.¹

In this action of the Legislature the alignment seems to have been one of political parties. Hitherto, in the long controversy with reference to the boundary, there had been on the part of the people of Maine complete unity both in feeling and in action. When there was discussion with those outside of Maine, only one voice was heard, a voice always insisting that the northeastern boundary was described by the language of the treaty of 1783, and could be determined. Now, a large minority in the Legislature, aligning itself politically as did the majority, had registered its opposition to the action just recorded.

But who was "Truth," who had ventured to give to the public early information concerning the secret session deliberations of the Legislature? Mr. Luther Severance, the editor and one of the publishers of the paper in which the objectionable communication appeared, was summoned before a committee of the House of Representatives and questioned concerning it. In his introduction to the communication as published he had stated that it was found in his letter box, and the added information was now drawn from him that before its reception he had a hint that such a communication might be expected; but when he was asked who

¹*Resolves of Maine*, II, 465-467.

gave to him the hint, he declined to answer. As he afterward stated in his paper, he was threatened with punishment by the House "for refusing to help them keep their own secrets." "We trust we shall always hold the 'rights of the House' in proper respect," he added, "but we do not mean to forego our own rights; and above all we mean to regard the RIGHTS OF THE PEOPLE, one of which rights is to know what their representatives are doing." When the committee reported to the House on the evening of March 7th, the discussion that followed made it plain that the leading members were in agreement that the House had no constitutional right to punish other than its own members, or as was said by Mr. Edward Kent, afterward governor of Maine, "become accusers, judges, and executioners; a grand jury, traverse jury, court and sheriff, all in one breath." When on March 9th the injunction of secrecy was removed with reference to deliberations in the secret session, it appeared that the following action had been taken: "Resolved, That said Luther Severance, in refusing to answer the question propounded to him by a committee of this House, has set at defiance the power, and violated the rights of this House, and is liable to be proceeded against for contempt."¹ Governor Washburn states that Mr. Severance "was committed to the Augusta jail for contempt, from which, however, he was soon released."² Search for any confirmation of this statement has not been rewarded, and the House seems to have gone no farther in the matter than to assert liability to procedure for contempt.³

In accordance with the action of the Legislature approved March 3rd and with the advice of the council, Governor Smith appointed William Pitt Preble, Reuel Williams and Nicholas Emery commissioners for the State of Maine. As commissioners representing

¹*Maine Daily Journal*, March 9, 1832.

²*Maine Historical Society Coll.*, First Series, VIII, 58.

³At a dinner, tendered to Mr. Severance by about one hundred citizens of Augusta at the "new Augusta Hotel," the freedom of the press received considerable attention, mingled with ardent congratulations to Mr. Severance.

the United States, the president appointed three of the members of his cabinet, Edward Livingston, secretary of state, Louis McLane, secretary of the treasury, and Levi Woodbury, secretary of the navy. The Maine commissioners reached Washington May 18th, and on the following day they had an interview with President Jackson. At this time the president stated that he had invested the commissioners of the United States with full power to enter into any agreement so far as he could act constitutionally, since whatever was done by the commission must be submitted to Congress in order to give it validity. Then, turning to the two of his own commissioners who were present, he instructed them to enter as soon as possible upon the consideration of the matters committed to them, it being his wish, he said, "not to have any diplomacy about it." The Maine commissioners, in reply, assured the president that the course he had suggested was most agreeable to them; and, referring to what he had said concerning congressional action, they reminded the president that no action of the commissioners would be obligatory on the state they represented until such action had been sanctioned by the Maine Legislature.¹

On March 21, 1832, and therefore after the action of the Maine Legislature accepting the president's proposal, the committee on foreign relations in the Senate of the United States made a report with reference to boundary matters. At its close the report recommended the adoption of the following resolution: "That the Senate advise the President to express to his Majesty the King of the Netherlands the assent of the United States to the determination made by him and consent to the execution of the same." The printing of the report, "in confidence for the use of the Senate," was authorized, and the subsequent proceedings of the Senate, when boundary matters were under consideration, were also in secret session—a reminder of recent similar sessions of the Maine Legislature.

¹*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 63, 64.

Not long after their arrival in Washington, the Maine commissioners, learning that the above mentioned report had not again been before the Senate, requested the Maine senators, Messrs. Holmes and Sprague,¹ to have the consideration of the report still further delayed. On June 9th, in answer to an inquiry from these senators as to the progress of the commission, the Maine commissioners stated that as yet their conferences had been without definite result, and they suggested that "a refusal on the part of the Senate to adopt and sanction the line recommended by the king of the Netherlands was exceedingly desirable, if not indispensable."²

The Senate on June 12th, probably in accordance with an arrangement made by the Maine senators, commenced the consideration of the boundary resolution reported on March 21st. Unfortunately the *Congressional Debates* of that time contain no report of the discussion that followed. After the injunction of secrecy was removed by the Senate at the close of the debate, however, two of the senators, Mr. Sprague, of Maine, and Mr. Clay, of Kentucky, furnished their speeches for publication.³ From these we learn that Mr. Tazewell, chairman of the committee, opened the debate, and that Mr. Holmes, of Maine, and Mr. Miller, of South Carolina, were among those who participated in it.

Mr. Clay, in his address, took the ground that there was nothing before the Senate requiring action in the present state of the boundary controversy. If the award of the king of the Netherlands was binding, he said, it derived its validity from the consent of the parties referring the subject to him, and also from his

¹Hon. Peleg Sprague. He had been for many years a prominent lawyer in Hallowell. For two terms (1825-1826, 1827-1828) he had been a member of the national House of Representatives. From 1829 to 1835 he was a member of the Senate. Not long after the close of his congressional service he removed to Boston, and was made judge of the District Court of the United States for that district. He was one of the original members of the Maine Historical Society.

²*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 75, 76.

³*Congressional Debates*, 1831-1832, VIII, Part I, 1399-1417.

having decided the case in conformity with the terms of the submission. If the arbitrator had not decided it, or if, in deciding it, he had transcended the terms of the submission, it was not binding, and the action required must come from the president. If the latter tells the British government that the government of the United States does not hold itself bound by the award, a negotiation would probably take place between the parties. If, on the contrary, the president notifies the British government that the United States are bound by the award, he would then have to come to Congress for legislative aid in carrying the award into effect. As a senator, therefore, he could not vote for the resolution reported by the committee on foreign relations. However, he had very positive views, he said, on the whole northeastern boundary matter. As secretary of state in an earlier administration, it became his duty to examine into the claim asserted by Great Britain, an examination that resulted in a strong conviction that the British claim was unfounded and that the right to the disputed territory was in the State of Maine. As to the king of the Netherlands and his award, he held that by the resolution in Belgium, the king was stripped of the better half of his dominions, leaving him king of Holland alone. Yet it was not to the king of Holland, but to the king of Belgium and Holland, that the boundary question was referred. It was of a monarch supposed to be unbiased, powerful and independent, that a decision was asked, and not of a sovereign, who, as the result of a revolution, found one-half of his own dominions the subject of British arbitration or decision in conjunction with other allied powers. By the loss of Belgium, the political character of the king was changed, and he ceased to be that friendly sovereign whose services as arbitrator had been solicited. Moreover, the king had not definitely decided the questions submitted to him. The paper communicated by him to the two governments did not contain a decision, but only an opinion as to what he thought might be regarded as a suitable boundary, leaving the parties concerned to adopt it or not as they deemed best. Therefore he could not concur with the committee

on foreign affairs in recommending that the president be advised to express to the arbiter the assent of the United States to the determination reached by him and consent to the execution of the same. He was also of the opinion that the government of the United States, declining to be bound by the king's award, ought to open a negotiation with Great Britain with reference to a settlement of the boundary controversy.¹

Mr. Sprague, on the following day, spoke at greater length than Mr. Clay. He contended, as did Mr. Clay, that the king of the Netherlands had given no decision upon the matters submitted to him, and that his opinion and recommendation with reference to the boundary was not binding upon the United States. The report of the committee on foreign affairs, in effect, had made that concession in its report. Referring to the terms of the treaty of 1783, the speaker showed that the arbitrator, without even professing to answer the questions submitted to him, had only recommended the substitution of a new boundary. Against such a new delimitation, the State of Maine had protested; and he proceeded to argue that the government of the United States had no constitutional authority to adopt new lines of demarcation in the disputed territory without the consent of the State of Maine. This, he said, she has never yielded. "Have now considerations of expediency been invoked? Well, as senators, the answer is, Our faith is pledged to the State of Maine to preserve inviolate the integrity of its soil, and to vindicate the sacredness of the persons of its inhabitants. But will not war be the consequence of a refusal to accede to this advisory opinion of the arbitrator?" Mr. Sprague did not believe it. He could not think that Great Britain would go to that extent for a cause so grossly unjust, for a pretension so recent, so utterly baseless. This subject, he said, should not be discussed as presenting a question of peace or war, or even a matter of general expediency. Maine stands modestly, but firmly, upon her rights. She asks nothing more—she can accept nothing less.

¹*Congressional Debates*, 1831-1832, VIII, Part I, 1412-1418.



PELEG SPRAGUE.

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In this connection Mr. Sprague alluded to the recent resolutions adopted by the Legislature of Maine in secret session as impairing the force of Maine's appeal on the ground of her rights. He was apprehensive, he said, that this action by the Legislature might weaken her cause. Nor did he believe it represented the settled views of the people of Maine. "Let me assure you," he said, "that the change of views and feelings indicated by the secret proceedings of the Legislature, so far from meeting a harmonious response from their constituents, have been received by a general, if not universal, note of popular disapprobation. Sir, the people of Maine have never authorized or assented to any suggestion of a relinquishment of any portion of their soil, or of their fellow-citizens; and from their character, their history, as well as the strong recent demonstrations of their feelings and opinions, I am confident they never will."¹

The resolution under discussion, it will be remembered, was as follows: "That the Senate advise the President to express to his Majesty the King of the Netherlands the assent of the United States to the determination made by him, and consent to the execution of the same." Several amendments were offered during the progress of the debate. The first of these, made by Mr. Holmes on June 12th, proposed to add, after the word "Resolved," the following, "two-thirds of the Senators present concurring therein." This amendment was adopted. Again on the 16th, it was moved by Mr. Mangum to amend the resolution offered by the senate committee on foreign relations by striking out all after the word "Resolved," and to insert two resolutions as follows:

"(1) That the Senate advise the President to communicate to his Majesty the King of the Netherlands that the United States decline to 'adopt' the boundary recommended by his Majesty as being 'suitable' between the dominions of his Britannic Majesty and the United States."

"(2) That the Senate advise the President to open a new negotiation with his Britannic Majesty's government for the ascertainment of the boundary

¹*Congressional Debates, 1831-1832, VIII, Part I, pp. 1399-1412.*

between the possessions of the United States and those of the King of Great Britain on the northeastern frontier."

A division of the question was ordered and the amendment to strike out all after the word "Resolved," in the resolution offered by the senate committee on foreign relations, was carried by a vote of 35 to 8, Mr. Tazewell, chairman of the senate committee, being one of the minority. So satisfactory was this action, apparently, that the Senate, on motion of Mr. Holmes, adjourned without proceeding to the question then recurring on inserting the proposed amendment.

No further action was taken until June 21st. Other amendments were then proposed, among them one by Mr. Clayton, adding at the end of the first resolution the words: "Because, in the opinion of the Senate, the King of the Netherlands has not decided the question submitted to him, touching the northern and northeastern boundary of the United States." This amendment was carried by a vote of 24 to 14. Other proposed amendments were defeated. One of these, offered by Mr. Webster, showed that the Massachusetts senator was in agreement with Mr. Clay in reference to the Senate's action. His amendment was as follows: "That having respectfully considered the message of the President of the United States, of December 7, 1831, transmitting the opinion of the King of the Netherlands in relation to the northeastern boundary of the United States, for the consideration of the Senate, whether it will advise a submission to that opinion, and consent to its execution, the Senate is not of opinion that this is a case in which the Senate is called on to express any opinion, or give any advice to the President." The amendment failed of adoption by a vote of 17 to 26. The question of inserting the first resolution as amended was then decided in the affirmative, yeas 21, nays 20.

On June 23rd, while the second resolution was under consideration, an amendment was adopted, proposed by Senator Sprague, of Maine, adding at the close of the resolution the following words: "according to the treaty of peace of 1783." It was then

voted to insert the amended resolution as proposed by Mr. Mangum. When action was now taken upon the original resolution as amended, a division of the question having been demanded, the first resolution was rejected (14 yeas, 30 nays), and the second adopted (yeas 23, nays 22), the action of the Senate being in these words:

“Resolved, That the Senate advise the President to open a new negotiation with his Britannic Majesty's government, for the ascertainment of the boundary between the possessions of the United States and those of the King of Great Britain, on the northeastern frontier of the United States, according to the treaty of peace, of 1783.”¹

Mr. Webster and Mr. Clay voted against both of the resolutions. Evidently the failure of the first resolution was the result of added reflection on the part of the members of the Senate. As it was proposed to advise the president to open a new negotiation with reference to the northeastern boundary, there was no need of taking any further notice of the award of the king of the Netherlands.

Although the action of the Senate was a victory for the president of the United States, the margin of success was very slight. Nothing further, however, was to be feared from the course pursued by the arbitrator; and on July 2nd the Maine commissioners in Washington were able to inform Governor Smith that already President Jackson had made known to them his purpose to proceed (as advised by the Senate) as soon as the present state of the boundary question and existing circumstances would admit.²

¹*Congressional Debates*, 1831-1832, VIII, Part I, 1394-1398.

²*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 79-81.

CHAPTER X.

PREPARATIONS FOR NEGOTIATION.

IMPORTANT conferences between the commissioners of the State of Maine in Washington and those appointed by President Jackson followed the action of the Senate in rejecting the boundary settlement recommended by the king of the Netherlands. In the earlier of these conferences the Maine commissioners drew up a provisional agreement for a settlement, which they submitted to their associates. On July 25, 1832, the latter returned an executed copy of this agreement with only a slight modification made necessary by the action of the Senate advising a new negotiation; and on August 21st, a counterpart agreement, executed by the Maine commissioners, was forwarded to the administration commissioners.¹ This was the action to which Mr. Livingston, as secretary of state, referred July 21st, in a letter to Mr. Bankhead, the British chargé d'affaires in Washington, informing him of an arrangement for the boundary settlement then in progress between the United States and the State of Maine, by which the government of the United States would be clothed with ampler powers than it had heretofore possessed.²

But no such agreement could have any binding effect until it should be ratified and confirmed by the Legislature of Maine; and the provisional agreement remained in the possession of the commissioners without further action until the meeting of the Maine Legislature. In fact, the report of the commissioners had not reached Governor Smith when his annual message was delivered on January 4, 1833. It must have been in his hands shortly after, however, for the letter of the commissioners, in forwarding their

¹*Manuscript Correspondence, etc., Northeastern Boundary, State Library, III, 87-90.*

²*Document No. 414, 24th Congress, First Session, 4.*

report and the agreement, was dated Portland, January 14, 1833.¹ But still there was delay in communicating this information to the Legislature. At length, near the close of the session, a joint request was sent to the governor, asking him to communicate to the Legislature the report of the commissioners appointed by him March 3, 1832, with such other documents relating to the north-eastern boundary as he had received and as soon as he could do so consistently with the public good. To this the governor replied on March 1, 1833. He had received the request, he said, but he had come to the conclusion that the publication of these communications at that time "could not fail to be prejudicial to the success of the negotiation instituted by the president with Great Britain, and adverse to the interests of both the State of Maine and of the United States;" but he assured the members of the Legislature, and through them the people of Maine, that no definite action on the part of the state in relation to the disputed territory could or would be taken until the whole subject had received the consideration of the Legislature, having in its possession the documents requested.²

At length, as the session drew to a close, the governor laid both the report and the agreement before the members of the Legislature. Evidently the pressure was so great that the governor deemed it wise to withhold no longer such information with reference to the new negotiation as was in his possession. The report dealt largely with the history of the boundary matter. After this review, and having asserted the constitutional rights of the state in the settlement of the controversy, the commissioners from Maine proceeded: "If, then, in the progress of the contemplated negotiation it should be found that what is demanded by Maine as her right is now utterly unattainable, and if the State, insisting upon its extreme right, denies to the United States all power under any circumstances to make even a beneficial compromise, it is well to inquire at this stage of the proceedings, where is the con-

¹ *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 91-107.

² *Resolves of Maine*, II, 599, 600.

trovery and the well-known state of things, and the onward course of events within the State, to lead us?" As to their own views, the commissioners state in closing that with entire confidence in the good faith of the government of the United States, in its several branches of administration, "we have been induced after the most mature consideration we have been able to give to the subject, to accede on our part to the provisional agreement," and they now submitted it "to the wisdom of the Legislature."¹

The agreement, as thus submitted, showed that Maine was to surrender provisionally to the United States all claim to jurisdiction and right of soil over the territory lying north of the river St. John and east of the river St. Francis. On the other hand the United States was to grant to the State of Maine an indemnity for the release of all right and claim to the above mentioned territory, the indemnity to consist of one million acres of land to be selected out of the unappropriated lands of the United States within the territory of Michigan, such land to be surveyed and sold by the United States under the same regulations which apply to the public lands, and the whole proceeds without deduction were to be paid to the State of Maine. If, however, in the result of any negotiation with Great Britain, the State of Maine ultimately should lose less of her territory than she would according to the line designated by the king of the Netherlands, the indemnity was to be proportionate to the actual loss. Also, if any new territory contiguous to the State of Maine, but not then within her limits, should be acquired from Great Britain by such negotiation, the same was to be annexed to the State of Maine and there was to be a further deduction from the indemnity mentioned.

In case, however, these attempts on the part of the president to negotiate should wholly fail, and the proper authority of the United States should determine to acquiesce in the line designated by the king of the Netherlands, the State of Maine was to receive the proceeds of the promised million of acres without any abate-

¹*Manuscript Correspondence, etc., Northeastern Boundary, State Library, III, 91-98.*

that until this agreement shall have been accepted and ratified by the Legislature of Maine, nothing herein shall in any wise be construed, as derogating from the claims and pretensions of the said State to the whole extent of her territory as asserted by her Legislature.

Nor shall any thing herein contained be construed so as to express or imply, on the part of the President, any opinion whatever on the questions of the validity of the decision of the King of the Netherlands, or of the obligations or expediency of carrying the same into effect.

Elbridge Gerry
Louis H. Lane

Samuel Woodbury
Wm. P. Preble

Reuel Williams
Nicholas Emery

THE LAST PAGE OF THE COMMISSIONER'S REPORT.

vingston, McLane and Woodbury were members of President Jackson's Cabinet. Preble, Williams and Emery were Commissioners from the State of Maine.

From the original in the State Library at Augusta.

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ment or deduction. But it was to be distinctly understood that until this agreement should have been received and ratified by the Legislature of the State of Maine, nothing in the agreement should be construed as derogating from the claim and pretensions of Maine to the whole extent of her territory as asserted by the Legislature; nor should anything in the agreement be so construed as to express or imply, on the part of the president, any opinion whatever as to the validity of the decision of the king of the Netherlands, or of the obligation or expediency of carrying the same into effect.¹

This agreement, in general terms, did not differ from that which was outlined in the president's proposal and which received the sanction of the preceding Legislature. The people of Maine, however, were by no means largely of the same mind as the members of the Legislature who gave that sanction. The remarks of Mr. Sprague in the debate in the United States Senate, as already mentioned, indicated very different convictions on the part of the people from those that found expression on the part of the majority in the debates in the Maine Legislature preceding the action taken March 3, 1832. It is not surprising, therefore, that the Legislature of 1833, having received the agreement formulated by the commissioners in Washington, proceeded at once to repeal the action taken one year before, and to indicate a new and advanced position of the State of Maine in the boundary controversy, making the validity of future action with reference to a settlement of the boundary controversy to rest on approval by the people of the state in town meeting, and by a majority of their votes. This action was approved March 4, 1833, and was as follows:

"Resolved, That so much of the Resolve passed the third of March in the year of our Lord one thousand eight hundred and thirty-two, entitled a 'Resolve respecting the territory lying north and east of the Rivers St. John and St. Francis,' as provides for the submission to the Legislature 'for approval or rejection,' of the agreement or treaty therein contemplated to be made by the commissioners therein mentioned, be and the same is hereby repealed.

¹*Manuscript Correspondence, etc., Northeastern Boundary, State Library, III, 99-107.*

“Resolved, That no arrangement, provisional agreement, or treaty already made, or in pursuance of the Resolve to which this is additional, shall have any binding force, effect or operation, until the same shall have been submitted to the people of this State, in their primary assemblies, and approved by a majority of their votes.”¹

This was a death blow to the proposal outlined in the agreement. Hitherto, Maine's attitude had been regarded by the national government and the government of Great Britain as an obstacle to success in boundary negotiations because of the state's demand that no agreement or treaty could have any effect unless it had received the approval of the Legislature. Here was a demand that required the approval of the people of Maine, expressed in their primary assemblies and by a majority of the voters. Naturally, such a demand had a depressing effect in Washington.

In the spring of 1833, Sir Charles Vaughan, the British minister to the United States, returned to his duties in Washington after an extended absence. In an early inquiry addressed to Mr. Livingston, secretary of state, he asked what arrangement had been made between the general government of the United States and the State of Maine for avoiding the difficulty in boundary affairs which the secretary of state had mentioned, July 21, 1832, in his note to Mr. Bankhead.² To this inquiry, Mr. Livingston, April 30, 1833, could only say that the anticipations with reference to the arrangement mentioned had not been realized, and that in the present state of the question the government could renew negotiation only on the basis of the establishment of the boundary presented in the treaty of 1783.³

In this note, however, Mr. Livingston suggested that a strict construction of the treaty of 1783, in its description of the boundary, might be overcome. “Thus,” he said, “if after more accurate surveys shall have been made, it should be found that the

¹*Resolves of Maine*, II, 580, 581.

²*Document No. 414*, 24th Congress, First Session, 5-7.

³No mention of Maine's new attitude was made in the letter. The president's proposal had gone to the scrap heap.

north course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the treaty of 1783, then a direct line from the head of the St. Croix, whatever may be its direction to such highlands, ought to be adopted, and the line would still be conformable to the treaty."¹

In his reply, May 11th, admitting that he did not "sufficiently comprehend Mr. Livingston's partially developed suggestion, Mr. Vaughan remarked that if the principle should be accepted," a deviation from the direct north line laid down in the treaty might lead to an oblique line being drawn to mountains to the eastward of it, which "would trench upon his Majesty's territory of New Brunswick."² Mr. Livingston, in his reply May 28th, amplified his suggestion; but Mr. Vaughan, in sending his letter to Lord Palmerston, did not forget to remind him of the old obstacle,—the attitude of the State of Maine in denying the power of Congress to dispose of any part of the disputed territory by an arrangement with Great Britain,—"and thus the proposed alternative in the mode of seeking the termination of the boundary according to the treaty is the only concession we can expect at present from the general government."³

About this time, Mr. Livingston retired from the department of state, and was succeeded by Mr. Louis McLane, already mentioned as one of the boundary commissioners in the preceding year. Evidently, the British government, in the suggestion made by Mr. Livingston, was encouraged to hope for a more favorable settlement of the controversy than it had been led to expect from the rejection of the award of the king of the Netherlands; and Mr. Vaughan, May 31, 1833, in a note to Mr. McLane, asked for further information with reference to that suggestion. If a special commission should be charged with the duty of finding "highlands" westward of the due north line which alone had hitherto been explored, what limitations was it intended to put

¹ *Document No. 414, 24th Congress, First Session, 9.*

² *Ib., 24th Congress, First Session, 12.*

³ *British and Foreign State Papers, XXII, 811.*

upon the course to be followed. Mr. Livingston's diagram did not explain whether the attention of the commissioners was to be directed to any particular spot, or whether they were to be left at liberty to stop at the first "highlands," answering the required description, which they might meet after leaving the monument.¹

In his answer of June 5, 1833, Mr. McLane called the attention of the British minister to the unalterable attitude of the State of Maine. The territory of Maine, he said, is supposed to comprehend all the land which would be thrown within her limits, by establishing the true line of the treaty of 1783; and as any conventional line, south of the true line of the treaty, would deprive her of so much of her territory, it could not be adopted, unless on grounds of greater public necessity than at present exist, without the consent of that state. It was not probable, he said, that such consent would be given, nor would the president be authorized, after the recent proceedings in the Senate, to venture to agree upon a conventional line, without such consent.²

The British minister found little encouragement in McLane's reply because of the restrictions imposed upon the president by "the pretensions of the State of Maine, which lays claim to the whole of the disputed territory;" and he added: "To admit the pretensions of Maine would be to allow the defects of the treaty to be construed entirely to the advantage of the United States; and Mr. Vaughan closed his letter with diplomatic courtesy in the words, "The undersigned has the honor to renew to Mr. McLane the assurance of his most distinguished consideration."³

At length (July 4, 1833), it being for the interest of Great Britain to obtain or secure an uninterrupted communication by the usual and accustomed road between Halifax and Quebec, Mr. Vaughan proposed to Lord Palmerston a line "following the due north line already explored and fixed from the monument at the source of the St. Croix river to the point where it strikes the St.

¹*Document No. 414*, 24th Congress, First Session, 14-16.

²*Ib.*, 24th Congress, First Session, 17, 18.

³*Document No. 414*, 24th Congress, First Session, 19, 20.

John, and thence let it be continued along the right bank of that river westward to its sources, and afterwards, by the most direct line to the sources of the Connecticut."¹ Instead of taking any notice of this suggestion, Lord Palmerston, December 21, 1833, sent a long communication to Mr. Vaughan, in which he recurred to the main points in the decision of the king of the Netherlands. Then, referring to a difficulty which he said had prevented the United States from acquiescing in the king's recommendation, viz., it not being the boundary of the treaty of 1783, he found a difficulty equally fatal in Mr. Livingston's suggestion, which was not according to the treaty of 1783.²

This certainly was a heavy blow at a suggestion which was designed to get rid of the "difficulty started by Maine." But March 11, 1834, replying to a note from Mr. Vaughan communicating the views of the British government in reference to the boundary, Mr. McLane again reminded the British minister that the resolution of the Senate, pursuant to which negotiation had been resumed, proposed to ascertain the boundary according to the treaty of 1783; "and for this purpose," he added, "by whatever means it may be ascertained, the authority of the government of the United States is complete, without the co-operation of the State of Maine;" and he amplified the statement made by Mr. Livingston in his note of April 30, 1833, that in all questions of boundary of tracts and countries designated by natural objects, the plain and universal rule of surveying is first to find the natural object, and then reach it by the nearest direct course.³ But he did not remind the British minister that Maine still had very definite and decided opinions with reference to that "due north" line and "highlands" of the treaty of 1783.

However, if it should be found impracticable to trace the boundary according to the treaty of 1783, Mr. McLane thought it might then be found desirable to enter upon a negotiation for the adop-

¹*British and Foreign State Papers*, XXII, 823, 824.

²*Ib.*, XXII, 830.

³*Document No. 414*, 24th Congress, First Session, 29, 30.

tion of a conventional line satisfactory to both parties. But here at once the shadow of the State of Maine fell upon the secretary of state and he added the discouraging words: "This mode, however, could only be adopted with the special assent of the State of Maine, and such assent was too remote to justify any attempt to procure it."

The secretary of state in Washington may have had in mind the words of Governor Dunlap² shortly before in his message to the Legislature of Maine, January 2, 1834. After a reference to the rejection by the Senate of the United States of the decision made by the king of the Netherlands, he said: "I cannot but consider the way as now open for the ultimate attainment of our rights. The determination of the present national administration 'to submit to nothing that is wrong'³ in its negotiations with foreign powers, furnishes a guaranty that the territorial and jurisdictional rights of Maine will not again be put in jeopardy by any arrangement to which this state is not a party, or to which its assent shall not first be obtained. What considerations may grow out of the negotiation now pending to induce the people of this state to assent to any proposed modification of their rights, I will not presume to anticipate. If any should arise in connection with a proposition of that character, our obligations as public servants, acting under a constitution which gives to us but limited powers, point directly to the people themselves, both for instruction and for the measure of authority that will be essential to a proper action upon the subject."⁴

¹ *Document No. 474*, 24th Congress, First Session, 31.

² Governor Dunlap was born in Brunswick, Maine, August 17, 1794. Graduating at Bowdoin College in 1815, he studied law and entered upon the practice of his profession in his native town. He was elected a state senator in 1827, and presided over that body. In 1835 he was elected governor, and held that office four years. In 1843 he was elected a member of Congress, and served two terms.

³ Jackson's second inaugural address, *Messages and Papers of the Presidents*, III, 3.

⁴ *Resolves of Maine*, II, 605, 606.



ROBERT P. DUNLAP.

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In a note to the British minister, March 21, 1834, Mr. McLane extended an invitation to the British government to unite with the president in a renewed effort to determine the line of the treaty of 1783.¹ This invitation was communicated to Lord Palmerston, who in his reply, October 30, 1834, addressed himself not only to the proposition of the president contained in Mr. McLane's note, but in the previous communications of Mr. Livingston of the 30th of April and 28th of May, 1833, namely, the proposition that new commissioners should be appointed, who should be empowered to seek, westward of the meridian of the source of the St. Croix, highlands answering to the description of those which are mentioned in the treaty of 1783."² The substance of Lord Palmerston's note was communicated December 8, 1834, to Mr. Forsyth, the new secretary of state for the United States; but notwithstanding a continuance of the correspondence between the two governments during the years 1835 and 1836, the attitude of the State of Maine, objecting to any other line than that of the treaty of 1783, was sufficient to set aside the various suggestions which from time to time found expression in these communications.³

In his annual message to the Legislature of Maine early in January, 1837, Governor Dunlap was obliged to say as in 1835 and 1836 that the boundary question remained unsettled, and that he had received no information that would warrant the expectation of a speedy adjustment. What this meant to the State of Maine was plainly stated, and he closed the statement with these words: "In this state of things, is it not due to our self respect, as well as to the cause of justice, that the State of Maine should insist on being immediately placed by the government of the United States, into the possession of the invaluable rights, from which she has been so long excluded."⁴

¹ *Document No. 414*, 24th Congress, First Session, 39, 40.

² *British and Foreign State Papers*, XXII, 858.

³ *Document No. 414*, 24th Congress, First Session, 42-64.

⁴ *Resolves of Maine*, III, 143, 144.

One of the suggestions in the correspondence between the two governments had been that of a new survey. Early in the session of the Legislature, a joint committee was instructed to inquire into the expediency of providing by law for the appointment by the state of commissioners, with the consent of the government of the United States, to survey the line between Maine and New Brunswick according to the treaty of 1783, and to establish monuments in such places as should be fixed by such commissioners and by commissioners appointed by Great Britain. The committee presented its report on February 2, 1837. Referring at considerable length to proceedings that followed the rejection of the recommendation of the king of the Netherlands, and giving some attention to British attempts to run the boundary line, the committee insisted that the time had come to begin a search for the line of the treaty of 1783, and to begin it in the right places. Our first object, it was urged, should be to ascertain and trace the north boundary of Nova Scotia, which is the south boundary of the Province of Quebec, and see if Canada comes down as far as Mars Hill. And we should proceed to finish the search, taking the elevations on the due north line to some point where the waters divide. The general government immediately should be called on to execute the work, with the co-operation of Massachusetts and Maine. Notice should be given to the British authorities to unite in the undertaking; and, if they refuse, our government ought to proceed *ex parte*. Accordingly, March 25, 1837, resolutions authorizing and requesting the governor to call on the president to cause such a survey, and the erection of monuments marking the line, were adopted.¹ Governor Dunlap made such a request of the national government in a letter to President Van Buren April 30th.

Among the people of New Brunswick the most active in political and international matters were the Loyalists at St. Andrews, who, in their continued devotion to the crown, were at all times alert in any line of endeavor that gave promise of an enlargement of provincial interests, especially civil and commercial. As early

¹*Resolves of Maine*, III, 173-185.

as 1835, they formed an association for bringing into public notice the practicability of constructing a railway between St. Andrews and Quebec. The project received the sanction and patronage of the governor-in-chief of British North America, the lieutenant governors of New Brunswick and Nova Scotia and the Legislatures of Lower Canada and New Brunswick. Surveyors were employed for the exploration of a desirable route, legislative action was taken, boards of trade were addressed in the interest of the scheme, and petitions were signed and forwarded to the king of Great Britain, soliciting the construction of a railway between the places named, or the extension of royal aid and protection to the petitioners in the proposed undertaking. This matter having been brought to the attention of the government at Washington, Mr. Forsyth, by request of the president, wrote to the British minister, March 23, 1837, characterizing this new step on the part of his Majesty's provincial authorities and subjects as a most exceptionable departure from the principle to abstain from any extension of the exercise of jurisdiction within the disputed territory while the differences between the two countries remained unsettled; and he informed the British minister that he was instructed by the president to state that the prosecution of such an enterprise would be regarded by the government as a deliberate infringement of the rights of the United States to the territory in question.¹

With reference to this protest the British government received early information; and in June, 1837, word went forth from Downing Street, London, that his Majesty's ministers acknowledged the force of the protest, and, much as they regretted any obstacle to an undertaking which promised such advantageous results, they refused to sanction any farther progress in it in opposition to the express remonstrance of the government of the United States.²

¹*Messages and Papers of the Presidents*, III, 367, 368.

²*British State Papers*, XXV, 941, 942. A copy of the letter of the British minister in Washington to Secretary Forsyth is in *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 203.

Such prompt action by the British government, with instructions to its officers on this side of the sea to take the most effectual measures to prevent any infringement of jurisdictional rights, made a very favorable impression at Washington. But the activity of New Brunswick officials in other directions dispelled any thought of improved conditions near the boundary. During the session of the Maine Legislature an act was passed making it the duty of the commissioners of Penobscot County to take a census of the inhabitants of the county residing north of the surveyed and located townships. Mr. Ebenezer S. Greely, of Dover, duly commissioned for this service, proceeded to Madawaska, and on May 29th, while thus employed, was arrested by New Brunswick officials and conveyed to Woodstock, in Carleton County. The sheriff there refused to commit him to jail, and he returned to his duties. June 6, 1837, he was again arrested. This time he was taken to Fredericton and imprisoned. Governor Dunlap, informed of Mr. Greely's arrest and imprisonment, brought his case to the attention of President Van Buren¹ and asked for the adoption of prompt measures for Mr. Greely's release. These were successful, and on August 25th, the secretary of state was able to inform the governor that the prisoner had been discharged.²

Soon after reaching his home Mr. Greely received instructions from the commissioners of Penobscot County to return to Madawaska and complete his census work. He soon made his way thither, where he met the warden of the forest lands on the disputed country and the solicitor general of the Province of New Brunswick, who had received information of his return. By them he was questioned as to his purpose in again appearing in Madawaska. He answered their questions by avowing his purpose, under official orders, to complete a census of Madawaska. Evidently the conversation was under some excitement, for Mr. Greely, as he later informed Governor Dunlap, told his questioners that Maine was "determined to take that census if it took

¹ Mr. Van Buren succeeded President Jackson March 4, 1837.

² *Messages and Papers of the Presidents*, III, 358-367.

every military man in the State;" and he added, that he was there unarmed and alone as before, and without fear of their "prisons," their "balls" and their "gibbets." Mr. Greely went about his work as directed, but after visiting several houses, he was re-arrested and again taken to the jail in Fredericton. From that place, on September 11th, Mr. Greely sent an extended account of these occurrences to Governor Dunlap, followed by other letters;¹ and September 18th, in a letter, the governor again carried the case to the president of the United States, asking that prompt measures should at once be taken to secure Mr. Greely's release. The secretary of state made a favorable response to this request, but evidently, from the secretary's letter, the information that Mr. Greely had returned to Madawaska was unwelcome to the president; and Mr. Forsyth, in his reply, reminded Governor Dunlap of the president's desire, previously expressed, that the exercise of jurisdiction within the disputed territory should be held in abeyance, and especially at a time when the president was expecting an answer daily to his last proposition for an amicable settlement of the boundary controversy.²

But if the president had his regrets, the people of Maine had theirs, especially as the close of the year found a citizen of Maine in a foreign prison for service under an order of the commissioners of Penobscot County.

Edward Kent,³ who had been prominent in recent legislative boundary matters, was now governor of Maine. In his message to the Legislature, January 22, 1838, he used plain, forcible words

¹*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 223-241.

²*Ib.*, State Library, III, 243-246.

³His election was the result of a well-remembered political overturn in the state. Governor Kent was born in Concord, New Hampshire, January 8, 1802, and graduated at Harvard College in 1821. In 1825 he made his residence in Bangor, where he became a prominent lawyer. Few men in the state, and none out of it, said Governor Washburn, understood the boundary question as well as Governor Kent. In 1859 he was appointed a justice of the supreme court of Maine.

in referring to the relation of Maine to the national government. No state, he said, is to be left to defend its soil and maintain its just rights single-handed and alone. Especially was this the case of Maine, a frontier state, bordering on foreign territory, and denied the power to negotiate with foreign governments, or to declare and carry on war in her own defense. It was her duty, therefore, to call, and in a strong voice, upon that government to which had been delegated high powers for her protection in the exercise of her jurisdictional rights.

Here Governor Kent referred to the arrest and imprisonment of Mr. Greely. The letters sent by Mr. Greely to Governor Dunlap seem not to have been placed in his hands, and he said the facts connected with the arrest were unknown to him; but if it was true that Mr. Greely was arrested "for exercising power delegated to him under a law of this State the dignity and sovereignty of the State and nation demand his instant release." It was not enough, he added, to say that the two governments concerned had agreed to permit the actual jurisdiction to remain as it existed before, pending an expected negotiation. He had seen no evidence that such an agreement was ever formally entered into by the parties. Certainly Maine was not a party to it. "If this jurisdiction is to be tolerated and acquiesced in indefinitely, we can easily see why negotiation lags, and two years elapse between a proposition and a reply. They have all they want, and the jurisdiction is claimed by them so absolutely that we cannot send an agent to number the people, and must hesitate, before the disputed line can be run to fix our limits and ascertain important facts. The first duty of Maine, as it seems to me, is to claim the immediate action of the general government, to move efficiently and decidedly, to bring the controversy to a conclusion."¹

Early in the year 1838, the British government, through its minister in Washington,² expressed to the United States government a desire to make a renewed attempt for the settlement of the

¹*Resolves of Maine*, III, 262-265.

²*Document No. 319*, 25th Congress, Second Session, 2.



EDWARD KENT.

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boundary controversy; and suggested the appointment of a commission to explore the disputed territory in order to find, within its limits, dividing highlands that would answer to the description of the treaty of 1783, the State of Maine being made an assenting party to such an arrangement. If such exploration should show no reasonable prospect of finding a line strictly conformable with the language of the treaty of 1783, it was added, the constitutional difficulties preventing the United States from agreeing to a conventional line might possibly be removed, and the way opened for an equitable division of the disputed territory. In a lengthy communication, presenting an historical outline of settlement endeavors between the two governments from 1783, Mr. Forsyth, the secretary of state in Washington, laid before Governor Kent, of Maine, by direction of the president, a statement of the above proposal of the British government in order to ascertain the views of the State of Maine as to the expediency of attempting to establish a conventional line of boundary between that state and the British possessions by direct negotiations between Great Britain and the United States; and whether the State of Maine would agree (and upon what conditions if she elects to prescribe any) to abide by such a settlement, if the same should be made.¹

This communication the governor sent to the Legislature March 14, 1838. It seemed to him inexpedient, he said, for the state to acquiesce in the proposed negotiations for a conventional line until it should be demonstrated that the treaty line was entirely impracticable. As to the intimation, that if the consent of Maine to direct negotiations with reference to a conventional line could not be obtained, the president would regard it his duty to propose to the British government a reference of the matter to a third party, the governor withheld any comment, but asked its consideration by the Legislature.² Such consideration it received, and the following resolutions, adopted by that body, were approved

¹*Manuscript Correspondence, etc., Northeastern Boundary, State Library, III, 323-383.*

²*Resolves of Maine, III, 387-393.*

by the governor March 25, 1838. In these plain, strong words, Maine again made her appeal directly to the president and congress of the United States.

"Resolved, That it is not expedient to give the assent of this State to the Federal Government to treat with that of Great Britain for a conventional line for our northeastern boundary, but that this State will insist on the line established by the treaty of 1763.

"Resolved, That as this State has never heretofore given her consent to the appointment of an umpire under the treaty of Ghent in 1814, but has protested against the same, and as she believes it to be a grave question, whether the provision of the treaty for this purpose has not done its office and is therefore no longer in force, she is not now prepared to give her assent to the appointment of a new Arbitrator.

"Resolved, That our Senators and Representatives in Congress be requested to urge the passage of the bill for the survey of the northeastern boundary of the United States, &c., now pending, and if said bill shall not become a law during the present session of Congress, and if the government of the United States, either alone or in conjunction with Great Britain or the State of Maine, shall not on or before the first day of September next, establish and appoint a commission for a survey of said boundary line, it shall then be the imperative duty of the Governor, without further delay, to appoint forthwith suitable Commissioners and Surveyors for ascertaining, running and locating the northeastern boundary line of this State, and to cause the same to be carried into operation."¹

Writing at Fredericton, New Brunswick, February 9, 1838, Mr. Greely informed Governor Kent that he had just been released from the jail in that place, and inclosed a copy of the order for his release, dated February 2nd.² As the order directed that the prisoner should be discharged forthwith, a week's delay seems to have been unnecessary. Mr. Greely soon made his way to Augusta. A legislative resolve, approved by the governor March 12th, appropriated five hundred dollars to Mr. Greely in recognition of his sufferings and losses.³ By a subsequent resolve a few days later, the sum of six hundred and seventy-five dollars was allowed and paid to John Baker and others for sufferings and

¹*Resolves of Maine*, III, 343, 344.

²*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, III, 263-268.

³*Resolves of Maine*, III, 287.

losses in connection with the organization of the town of Madawaska in 1831.¹ In both cases, the governor was requested to ask reimbursement from the government of the United States for the money paid by the state. Such reimbursement, the governor wrote to the president, would be a declaration on the part of the United States that a strong arm would be outstretched for Maine's protection in every lawful effort to maintain just claims.

A strong desire, also, was expressed that some immediate action should be taken by Congress for the erection of military posts and fortifications in eastern Maine. A communication from the adjutant general of the state with reference to the lack of such defenses was forwarded by the governor to the secretary of war April 5, 1838; and in accordance with the governor's request Brigadier General John E. Wool was sent to Maine with instructions to report a plan of defense.² This duty he performed.

It was also decided to send a special agent to Washington to co-operate with the Maine delegation in Congress³ in urging Maine's boundary claims; and Charles S. Daveis, of Portland, who had already served the state in a mission to New Brunswick,

¹*Resolves of Maine*, III, 291. Of this amount \$350.00 was paid to John Baker, \$125.00 to Walter Powers and \$50.00 each to Nathaniel Bartlett, Augustine Webster, Isaac Yearington and John Harford, Jr.

²Having completed this service, General Wool recommended the establishment of a post in the vicinity of Moose River on the Canada road, fourteen miles from the Canada line, with an advanced post on the height of land which divides Canada from Maine; also a depot and concentration camp for the militia on the upper Kennebec and another depot at the foot of Moosehead Lake. The force at Houlton should be increased to five companies of infantry and one of artillery. At Calais he would place eight companies of infantry and two of artillery; at Eastport, two of infantry and one of artillery. At Bangor or vicinity, he would establish an arsenal, and fortifications at the entrance of the Penobscot and Kennebec rivers. Governor Kent informed General Wool that in twenty days he could muster at the Forks of the Kennebec 12,000 militia, at Mattawamkeag 10,000 and at Calais 8,000. The enrolled militia in the state was 41,000.


³The delegation at that time was as follows: John Ruggles, Reuel Williams, senators; John Fairfield, F. O. J. Smith, George Evans, Thomas Davee, H. J. Anderson, J. C. Noyes and Edward Robinson, representatives.

received the appointment. In his instructions he was directed to urge the necessity of immediate attention on the part of Congress to the establishment of fortifications and military posts in the boundary territory, and especially to enforce the necessity of effective measures for running the boundary line expressed in the bill then before Congress and in the treaty of 1783. In a letter to the members of the delegation, Governor Kent wrote: "No departure from the treaty line is the emphatic note of Maine and so far as rests upon me, her will and wishes, as expressed by the Legislature, shall be of binding force and faithfully executed. But I cannot but feel that if we are driven to assume this responsibility, and to go forward unaided and unsupported, the general government will be fully chargeable with neglect of a constitutional duty and an abandonment, in the moment of peril, of one of the States of the Union whose claims have already been too long postponed and too lightly regarded."¹

¹*Message of Governor Kent with Appendices, 25-27.*

CHAPTER XI.

MAINE CARRIES HER CASE TO WASHINGTON.

 ON reaching Washington Mr. Daveis found that Mr. Davee, a member of the national House of Representatives from Maine, had introduced a resolution calling upon the president of the United States to inform the House what measures, if any, had been taken by the executive for the release of Mr. Greely; also to communicate any correspondence he may have had with the British government, or the executive of Maine, with reference to Mr. Greely's imprisonment. At the same time, the president (if in his judgment it would not be incompatible with public interest) was requested to communicate to the House any correspondence between the government of the United States and that of Great Britain "respecting the wardenship, occupation, or actual possession of that part of the territory of the State of Maine which is claimed by Great Britain."¹

On the 15th of December preceding, Mr. Evans, of Maine, had given notice in the House that, on the first day when the states should be called, he would ask leave to introduce a bill for the demarcation of the northeastern boundary line. No such opportunity for the introduction of the bill was afforded, however, but on January 29, 1838, a message was received from the president, transmitting certain documents concerning the imprisonment of Mr. Greely; and on motion of Mr. Evans consideration of the documents was postponed until February 7th, when he asked that they should be referred to the committee on foreign relations. He also requested leave to introduce the bill, previously mentioned by him, for surveying the northeastern boundary of the United

¹*Congressional Globe*, 25th Congress, Second Session, VI, 86. Mr. Williams, in the Senate, also called for the correspondence on February 2nd. *Ib.*, 156.

States according to the provisions of the treaty of 1783. Objection being made, Mr. Evans addressed the House, concluding his speech on the following day.

He was reluctant, he said, to persevere in his purpose to call attention to boundary matters against the wishes of the chairman of the committee on ways and means, who had appealed to him for a further postponement of the subject; but he felt that he would be wanting in his duty to the State of Maine if he neglected to take the first opportunity which had offered for bringing this important subject to the attention of the House—a subject that had never been discussed in Congress, and yet was one of the most deep and abiding interest to the states of Maine and Massachusetts. Even the president, in his message, had expressed his great surprise that the government had been organized for half a century and yet did not know its own limits. The object of his bill was to accelerate the movements of the general government to a settlement of the issue. What he desired was that the legislative power of the country should come to the aid of the executive. The bill he had presented was not his measure only. It was a measure of the people of Maine, and was called for by its Legislature. "In offering it," he said, "I but obey the voice and conform to the will of the State, distinctly expressed in resolutions now upon your table."

As Mr. Evans proceeded, the speaker's strong grasp of the facts in the case enlisted the attention of his hearers. A statesman was marshaling those facts. Other matters of business, however pressing, were forgotten. The objection to the speaker's obstruction of the appropriation bill was at length withdrawn; and Mr. Evans accomplished his purpose, as announced early in his speech when he said, "Something must be done, and that soon. I propose to do it *now*."

The whole history of the controversy hitherto was reviewed. Exceedingly forceful was the speaker in showing that in the early stages of the boundary negotiations the British admitted that the description of the line in the treaty located the "highlands"

north of the St. John River; that later they asked for the "variation" of the line by the cession of a small tract of unsettled country in order to secure direct communication between Quebec and Halifax; that failing in this they raised a feeble doubt whether that tract did not already belong to Great Britain; then they denied the American claim as incapable of location; when at length the question was made the subject of arbitration, and border troubles arose, an arrangement was suggested in accordance with which neither party, pending the arbitration, was to exercise exclusive jurisdiction in the disputed territory, but both were to practice forbearance. Meanwhile, Great Britain, increasing her pretensions, came to assert exclusive sovereignty, arrested and imprisoned American citizens, until the United States government practically left Great Britain in entire possession. Now both governments were talking of "an assumed line of boundary," "a conventional line," a line "freed from the restraints of a due north line." Against this Mr. Evans protested. Hence his bill, designed to put an end forthwith to an arrangement "supposed to be subsisting, whereby the territory in dispute has passed from the possession and jurisdiction of Maine, where it rightfully belongs, to the possession and under the jurisdiction of British authority—an arrangement which, as we believe, has operated strongly in procrastinating the negotiations between the governments of Great Britain and the United States, which has been the foundation of new pretensions and fresh aggressions, which has exposed our territory to be plundered of its valuable productions, and has surrendered up our citizens to be arrested and imprisoned for obedience to our laws at the pleasure of a foreign power."¹

John Fairfield,² who was serving his second term as a member

¹*Congressional Globe*, 25th Congress, Second Session, VI, 168.

²Mr. Fairfield was born in Saco, Maine, January 30, 1797. He studied law with Judge Ether Shepley, and was admitted to the bar in 1826. In 1832, he was made reporter of decisions of the supreme court. He was elected a representative in Congress in 1835 and 1837, but resigned on being elected governor of Maine in 1838. He was re-elected governor in 1839, 1841 and 1842. When Reuel Williams resigned his seat in the United States Senate, Mr.

of the House of Representatives from Maine, and became the next governor of the state, also addressed the House in support of the bill, which, on March 13th, was referred to the committee on foreign affairs. It is not too much to say that these two speeches brought Maine's case before Congress and the people of the United States in such a way as not only to command attention, but also to awaken support for the state in her attitude of opposition to the ever advancing claims of the British government.

Early after his arrival in Washington, Mr. Daveis had an interview with the secretary of state concerning a reimbursement to Maine for allowances made by the state to Mr. Greely and others on account of their losses and sufferings in connection with boundary troubles. The secretary, in reply, took the ground that the president had no power to reimburse the state without the authority of Congress. When, on May 29th, the matter was brought to the attention of the House of Representatives by Mr. Evans, the chairman of the committee on foreign relations, Mr. Howard, reminded the House that a similar application on behalf of the State of Maine was received in the previous year and rejected. At his request, however, after referring to the matter at considerable length, the application for reimbursement was laid upon the table; and it rested there until the close of the session, when it was again called up, receiving finally the sanction of both branches of Congress and the approval of the president, a tribute to the labors of the Maine delegation and the tactful general management of the special agent of Maine.¹

In approaching the general government with reference to the necessity and expediency of some effective measures for running the line in the manner proposed by the bill before Congress, Mr. Daveis found that the president had opened another negotiation with the British government, having in view a provisional

Fairfield was elected as his successor, and was re-elected in 1845. He died in Washington, December 24, 1847.

¹ This action, which was taken July 7, 1838, appropriated \$1,175.00 to reimburse the State of Maine for appropriations in favor of Ebenezer S. Greely, John Baker and others.



JOHN FAIRFIELD.

1. **THE** **PROBATION** **DEPARTMENT**

arrangement for a mutual survey of the boundary with reference to the future establishment of the line. This negotiation, it was understood, was on the basis of what was designated as the original American proposition with modifications offered by the British government.¹ This was the unfortunate proposition of Mr. Livingston, in which, as already mentioned, the former secretary of state abandoned the north line of the treaty of 1783 in pursuit of "highlands" at some point westward of the "due north line." In the proposition, also, there was an abandonment of the reference in the treaty to "highlands" dividing waters flowing into the St. Lawrence from those that fall into the Atlantic Ocean. To that proposition the attitude of Maine was now made so plain, it was believed, that the boundary question was "freed from any such suicidal concession;" and Mr. Daveis had reason for regarding it as a matter of congratulation that the unaccountable misconception, which had so long prevailed on this subject, and with such disastrous effect in connection with the negotiations, had now been removed, and it was hoped forever.²

But the most important part of Mr. Daveis' mission had reference to the clear and well-settled views of the State of Maine as expressed in the resolutions adopted by the Legislature and approved by the governor, March 23, 1838. These resolutions, it will be remembered, had reference to the necessity for the adoption of some effective measures for running the line in accordance with the language of the treaty of 1783.

¹*Appendix to Congressional Globe*, 25th Congress, Second Session, VI, 386.

²*Ib.*, 54-61. Mr. Daveis' services at this time received from Governor Kent the following commendation: "I think I can confidently say that no agent or envoy ever labored more diligently or more intelligently or efficiently than he did. . . . By his earnest persuasions, he induced both Mr. Webster (on the 4th of July) and Mr. Buchanan and others, to espouse our cause distinctly and earnestly in strong speeches. He alone brought the whole question out of its narrow locality in the state into a national matter, regarded as one of interest to the whole country. . . . I have always believed that Maine owed more to him than to any other man in thus bringing the whole subject before the nation and compelling action." *Memoir of Charles S. Daveis*, by David G. Haskins, Esq.

May 14, 1838, a bill similar to that introduced in the House by Mr. Evans was brought into the Senate by Mr. Williams,¹ of Maine, and referred.² At that time the House bill had been reported back to that body without any indication on the part of the committee on foreign relations as to its disposal; and it remained on the table of the House awaiting favorable opportunity for action, perhaps with reference to action elsewhere. On June 14th, according to the record in the *Globe*,³ Mr. Webster, in the Senate, "took up Mr. Williams' motion for leave to bring in a bill for instituting a joint commission—British and American—of exploration and survey, to determine the northeastern boundary of the United States on the basis of the treaty of 1783." An earlier record in the *Globe* seems to indicate that the bill introduced by Mr. Williams had gone to some committee not mentioned, probably that on foreign relations. This much is certain, however, that Mr. Webster found opportunity for addressing the Senate with reference to the boundary controversy. Unfortunately his speech has not come down to us. We know, however, from the brief record in the *Globe* that he "spoke at large on the subject, chiefly with a view to show that the line, designated by the treaty of 1783, was well defined and easily and readily to be found." This was the fact upon which Maine had insisted from the first, and was still insisting, but which Great Britain, with increasing determination, endeavored to obscure, and finally to deny. That Maine now, in Daniel Webster, had so powerful an advocate was a most hopeful sign. At the request of Mr.

¹Renel Williams was born in that part of Hallowell now known as Augusta, Maine, June 7, 1783. In 1804, he was admitted to the bar, and rapidly rose to professional prominence in the state. Early he was made agent for the "Proprietors of the Kennebec Purchase." In 1822-1825, he was a member of the Maine House of Representatives, and of the Senate in 1826-1828. In 1837, he was elected a member of the Senate of the United States, and served until 1843. He died July 25, 1862, leaving a record of faithful, honorable service.

²Congressional Globe, 25th Congress, Second Session, VI, 373.

³Id., 25th Congress, Second Session, VI, 453.



REV. WILLIAMS.



Buchanan,¹ chairman of the committee on foreign relations, the bill was laid on the table. Evidently Mr. Buchanan had been greatly impressed by what Mr. Webster had said; for on June 18th, again calling up the bill, and addressing the Senate, Mr. Buchanan said it was not his intention to examine in detail the title of the United States to the disputed territory. "If I ever had intended it," he said, "I should have abandoned the intention after hearing the senator from Massachusetts. For clearness of statement and accuracy of detail, I have rarely heard anything superior to his speech. I feel confident that every senator who attended to it, must have been convinced, not only of the justice but the clearness of our title."²

In his own speech, of which we have an extended report, Mr. Buchanan followed Mr. Webster in upholding Maine's contention that it was folly to talk of any conventional boundary line when the language of the treaty of 1783 is plain, direct. "This proposition for any conventional line whatever," said Mr. Buchanan, "has been rejected by the American government, it has been rejected by the government of Maine, and I hope we may never again hear it mentioned. The treaty is the foundation of our rights. To that, and to that alone, we ought to cling, until it shall be found, which I deem impossible from the nature of things, that the northwest angle of Nova Scotia cannot be found, and that the idea of a dividing ridge between the waters which flow in different directions on the face of the earth, is a mere delusive fancy. Then, and not till then, ought we again to discuss the question of a conventional line."³

But a difficulty had arisen because of the government's announcement to Great Britain of its willingness to enter into an arrangement with that country "for the establishment of a joint commission of survey and exploration upon the basis of the 'orig-

¹James Buchanan, fifteenth president of the United States; United States senator from Pennsylvania, 1833-1845; secretary of state, 1845-1849; minister to Great Britain, 1853-1856; president, 1857-1861.

²*Appendix to Congressional Globe*, 25th Congress, Second Session, VI, 383.

³*Ib.*, 25th Congress, Second Session, VI, 384.

inal American proposition' and the modifications offered by her Majesty's government."¹ In this state of the government's negotiation with the British government, the important preliminaries having all been settled, Mr. Williams' bill was a proposal to arrest the progress of these negotiations, take the matter out of the president's hands, and by an act of Congress "to run and mark and establish this line against the consent of Great Britain." Such a course, Mr. Buchanan thought, might prove fatal to the interests of Maine, and would be, he said, "an open palpable violation of public faith."

But Mr. Buchanan went farther and held that the Legislature of Maine transcended its legitimate power in adopting a resolution declaring that "if the government of the United States, either alone, or in conjunction with Great Britain or the State of Maine, shall not on or before the first day of September next, establish and appoint a commission for a survey of said boundary line, it shall then be the imperative duty of the governor, without further delay, to appoint forthwith suitable commissions and surveyors for ascertaining, running and locating the northeastern boundary line of this State, and to cause the same to be carried into operation." Such an expression, he thought, manifested more of passion than of policy, and he felt confident that the good sense and the ardent patriotism which so strongly characterize the people of Maine would induce them to pause and reflect long before carrying this determination into effect.²

Replying to Mr. Buchanan, on the same day, Mr. Williams thanked the Pennsylvania senator for his able and unanswerable argument in support of the right of Maine and of the United States to hold the disputed territory according to the line of the treaty of 1783, and for exhibiting the unsoundness of the arguments of the British government in the endeavor to establish its own claim. But when he supposes, he added, "that Maine wishes

¹ Letter of the secretary of state in Washington, May 8, 1838, to the governor of Maine. *Appendix to Congressional Globe*, 25th Congress, Second Session, VI, 386.

² *Ib.*, 25th Congress, Second Session, VI, 386.

to take the law into her own hands, and in the measures she has adopted appears to have been governed more by passion than by policy," he felt bound as a citizen of that state, and one of her senators, to state the facts in the case, from which the senators could judge whether or not the State of Maine should be regarded as acting from passion, or from a just estimate of her important rights and of the proper means for their maintenance. He then called attention to the correspondence between the two governments with reference to the boundary. Replying to the charge that Maine acted inconsistently in finding fault with the recent proposition of the president to the British minister, inasmuch as her governor and Legislature had invited the measure, he said this depended upon a just construction of the resolutions adopted and approved by the authorities of Maine. "It may be, and probably is true, that her acts and resolutions have been considered by the President as indicating her desire for the establishment of a commission of exploration and survey; but knowing, as I do, the feelings of the people of Maine upon this question, and having examined the report of the committee to whom Mr. Forsyth's letter and the message of the governor were referred, I am well satisfied that it was not intended by the Legislature, or by her resolutions, to express any desire for the creation of a commission *upon the principles proposed by Mr. Forsyth to Mr. Fox, in his letter of 27th April last.*"¹

The debate was continued on June 20th by Senators Clay, Buchanan, Davis, Wright, Calhoun and Rives, and then referred to the committee on foreign relations. The facts in the case had been frankly and fully stated, and unity of action on the part of the Senate was regarded as assured. Mr. Davis, in his report of the debate,² referred to the services of Mr. Davis,³ senator from

¹*Appendix to Congressional Globe, 25th Congress, Second Session, VI, 396, 397.*

²*Ib., 25th Congress, Second Session, VI, 464, 465.*

³Hon. John Davis, the twelfth governor of the Commonwealth of Massachusetts. After serving one term as governor, he was elected a member of

Massachusetts, "who, without derogation from the merits of any other honorable member of that body, it may be due to say, distinguished himself, throughout the debate, as the inflexible and unflinching champion of the rights of Maine, and of the position she had assumed, and the principles she had maintained through circumstances of great trial to her fortitude and forbearance."¹

The report of the Senate committee on foreign relations was made on July 4th, a fitting occasion for the presentation of a document wholly in harmony with the patriotic memories which Independence Day always evokes. Mr. Buchanan, chairman of the committee, submitted its report, covering nearly sixteen printed pages. "Has the United States, beyond a reasonable doubt, a clear title to the disputed territory?" was the first question considered. This, it was asserted, depends upon the correct construction of the treaty of 1783. The language of the treaty, accordingly, was carefully examined. The source of the St. Croix River, from which the "due north line" was to be run, had been ascertained by a joint commission appointed by the two governments, and a monument had been erected at its source. The northwest angle of Nova Scotia was shown to be at a point long known and well established. It was also shown that the construction placed upon the treaty, fifteen years after its ratification by the solemn official declarations of high, responsible agents of the British government, was "wholly inconsistent with the present claim of Great Britain, embracing about one-third of the territory of the State of Maine." The principles on which Great Britain now rested her claim to the disputed territory were then considered, first that the northwest angle of Nova Scotia is to be found at Mars Hill, and that the "highlands" of the treaty are to be found to the westward of that point; second, that if this be not the true treaty line, it is impossible to find it. The extraordinary pretensions and assumptions upon which the claim is thus made

the Senate of the United States, but resigned in 1841, and again became governor of Massachusetts. He died in Worcester, Massachusetts, April 19, 1854.

¹*Appendix to the Governor's Message*, January 2, 1839, No. 16, 64, 65.

to rest were sharply and forcefully reviewed, and this part of the report closed with the words, "Upon the whole, the committee do not entertain a doubt of the title of the United States to the whole of the disputed territory. They go further, and state that if the general government be not both able and willing to protect the territory of each state inviolate, then it will have proved itself incapable of performing one of its first and highest duties."

The committee then considered the second proposed question, namely, "Does no other and more friendly expedient remain untried of bringing this long pending controversy to a conclusion, than the passage of the bill referred to them by the Senate?" This question was answered in the affirmative. Although the members of the committee were firmly convinced that the title of the United States to the territory in dispute was clear and unquestionable; although they acknowledged that the State of Maine had just reason to complain not only of the long and vexatious delay which had been experienced in settling this question, but of the assumption of actual jurisdiction by Great Britain over a portion of Maine's territory; they still entertained a very confident hope that the pending negotiation would be productive of happy results. The important preliminaries of a convention between the two governments for the purpose of exploring and surveying the disputed lines of the treaty boundary had already been adjusted, and it seemed not advisable to withdraw the subject from the president, to whom it more properly belonged, but to direct the boundaries to be surveyed, the lines to be marked and monuments to be erected thereon, under the authority of Congress.

In place of the bill referred to them, accordingly, the committee recommended the adoption of three resolutions, in which, while entertaining no doubt of the practicability of running the boundary line as described in the treaty of 1783, and believing in the validity of the title of the United States to the whole of the disputed territory, considering, also, the great delay which had hitherto marked the negotiations of the two countries in their endeavor amicably to settle the controversy, and the danger of

continued irritation and collision on the border, the committee recommended that the pending negotiation should be brought to a close; also, that it was inexpedient for the United States to proceed to survey and mark the boundary until all reasonable means had been exhausted for effecting that object by the consent and concurrence of both parties. The Senate committee, therefore, desired that the bill referred to it, providing for the survey, ought not to pass, but should be laid upon the table.¹

Mr. Clay, addressing the Senate, said the report should be weighed with all the attention and consideration belonging to so grave and important a subject. The work of the chairman of the committee, who had devoted to it much labor and great ability, was all the more creditable to its author, as it had been prepared while he was engaged in various other pressing duties. He was anxious, he said, that the sense of the Senate with reference to the subject of the resolutions, as recommended, should be taken with as little delay as was possible.

Mr. Tallmadge, of New York, as a member of the committee on foreign relations, said he had carefully examined the report and concurred entirely with the senator from Kentucky as to the ability with which it had been prepared and the manner in which it presented the great question. If, unhappily, at any time hereafter any collision should arise between the two countries, which he hoped most sincerely would be avoided, it was very important that the people of the country should understand the merits of the controversy. They were set forth in that report in a condensed, and at the same time sufficiently complete and ample manner to enable them fully to comprehend and understand it. The report ought, therefore, to be widely circulated. It was calculated to unite and concentrate the sentiment of the country, if occasion, which he earnestly deprecated, should ever arise. He therefore moved for the printing of ten thousand extra copies of the report.

Mr. Rives, of Virginia, expressed his cordial and entire con-

¹*Document No. 502, 25th Congress, Second Session, 1-16.*

currence in the remarks which had been made by his colleagues on the committee. The report was drawn with distinguished ability, clearness and force. The argument on both sides was fairly represented, and the paper would compare, to great advantage, with whatever had been written, that he had seen, upon the subject. It was very important that the merits of the question should be made familiar to the American mind; and no document, he conceived, was better calculated to enlighten and conduct it to sound conclusions. He should vote, therefore, with the greatest pleasure, for the number of copies proposed, and even for the highest number any senator might deem it expedient to have published.

Mr. Williams, of Maine, said that the great importance of the question, and the able manner in which it was treated and our right maintained in the report, induced him to desire that a larger number of copies of the report than that proposed by the senator from New York, should be printed. Everyone must see that important results may grow out of the report and resolutions; and it is very desirable that as many of our citizens as can be induced to look at the question, should have the means at hand of understanding it, and of being convinced that we are claiming our right and nothing more. This report, coming from the committee on foreign relations, and from senators possessing the confidence of the nation, must carry conviction to the mind of every man who will read it; therefore he asked that twenty thousand copies should be printed.

Mr. Allen said he would vote for the printing of the largest number of copies proposed. This controversy has assumed a very imposing aspect; so much so, indeed, as to render it more than possible that the united energies of this people may be required in its future adjustment. Yet, so exclusively local has the question been considered hitherto, that its discussion has excited public attention in no other quarter of the Union than that more immediately interested in it. It has not caught the attention of the great body of the American people. This state of things can no

longer exist. The controversy has now taken a form that must interest every citizen of the republic. He would therefore place this report before the country as evidence of the justice of our claim, and of the position which our government has taken, in order that the public judgment, and with it the public energies of the nation, may be concentrated in support of that claim in any emergency to which its adjustment may give rise.

Mr. Clay said it was his wish that the report might be acted upon that day. As he advanced in life, he acknowledged the influence of feelings and sentiments which might be regarded as bordering upon superstition. At all events, there was a peculiar fitness in resolving on the Fourth of July to maintain the integrity and inviolability of the old thirteen United States.

The resolutions offered by the committee were then agreed to without opposition, and it was ordered that twenty thousand copies of the report and resolutions should be printed.¹

It is a matter of regret that the *Congressional Globe* has not preserved for us the speeches made in the Senate during this discussion with the exception of those of Mr. Buchanan and Mr. Williams. Especially is it to be regretted that we have no report of the speech of Mr. Webster, which was so highly commended by those who heard it. Unquestionably his early participation in the Senate's consideration of the committee's report was of great assistance in placing the whole discussion upon such a high level as to make Maine's case the case of the country as a whole. Not only in the newspaper reports of the debate, but by the twenty thousand copies of the committee's report, Maine's case was carried to all parts of the land.

Mr. Daveis, who, as the special agent of Maine in Washington, understood the situation in all its aspects, referring to this debate in his report to Governor Kent, said: "The whole subject was thus spread before the country and the world. This was the first full and deliberate expression of that body upon it. And when we consider its solemnity, and the character of that august assem-

¹*Congressional Globe*, 25th Congress, Second Session, VI, 496, 497.

bly, the weight and importance of that opinion must be regarded as immense. Previous to that time the subject had only been before the Senate under special and limited aspects. Singular as it may seem, it was admitted not to have been generally understood, and to have been little considered, or indeed realized, among the community. The question was one, which had presented itself to minds of the first intelligence in other parts of the Union very much in the light of a local controversy. It had been regarded in some measure as a remote and obscure border difficulty, about which there might be room for different conclusions; and was not looked upon as of a nature to interest, or require, general attention. This idea was entirely dispelled. A new light, moreover, was shed upon the subject. The discussion itself had served, in an extraordinary degree, to fix the attention of the Senate, to many of whose members the impression was comparatively new, upon the intrinsic merits of the question; and a conviction was produced among all who were present, and who were not in any foreign interest, no less in favor of the integrity of it on our part, than of its character of immediate public importance. Opinion in these respects was informed, enlarged, convinced and concentrated. The most perfect accordance displayed itself upon all quarters; and it was emphatically acknowledged, and expressed, from all parts of the Union, that Maine had made out a clear case."¹

These proceedings in the United States Senate with reference to the boundary had a strong influence upon the action that followed in the House of Representatives. On July 7th, Mr. Fairfield, of Maine, from the committee on foreign relations, reported back the bill to provide for surveying the northeastern boundary line of the United States, according to the provisions of the treaty of 1783, accompanied by the first two of the resolutions adopted by the Senate. He then moved the consideration of these two resolutions, and the House, evidently without discussion, unani- mously concurred with the Senate in its action; but it left the

¹*Appendix to the Governor's Message, January 2, 1839, No. 16, 66, 67.*

third Senate resolution upon the table, refusing thus to agree with that body in its vote that it was inexpedient to proceed to survey and mark the boundary until both countries should concur in effecting that object.¹

¹*Congressional Globe*, 25th Congress, Second Session, VI, 502.

CHAPTER XII.

OTHER SURVEYS.

IT will be remembered that the Legislature of Maine, in requesting the representatives of the state in Congress to urge the passage of a pending bill for a survey of the northeastern boundary, added this direction, that in case the bill should not become a law during that session of Congress, and if the government of the United States, either alone or in conjunction with Great Britain or the State of Maine, should not on or before September 1, 1838, establish and appoint a commission for a survey of the boundary, it would become the imperative duty of the governor of Maine to appoint forthwith suitable commissioners and surveyors for ascertaining, running and locating the northeastern boundary of the state, and to cause the same to be carried into execution. This action of the Legislature was designed to hasten the settlement of the boundary question; and, to some, undoubtedly, it was a matter of regret that the proposed measure for securing such a survey did not receive the sanction of Congress. As the bill failed, however, and as the Legislature of Maine could not reconsider its action, being no longer in session, it only remained for the governor to proceed in accordance with the mandate contained in the resolution, and make the appointment of commissioners and surveyors. Mr. Daveis, in his report, referred to the situation in these words: "It is the command of the people of Maine that the line shall be run. The unanimous verdict of the country has been pronounced in favor of their right; and Congress certainly has not in this, or in any other manner, expressed any opinion unfavorable to the proper proceeding of the State, within its clear limits, upon its own responsibility. In the situation, on the other hand, in which Congress felt obliged to leave the subject of a survey by the

national authority, from the pending state of negotiation, it is not to be inferred that public sentiment might not be satisfied with such a construction of what has taken place, on the one part, and on the other as should leave Maine free to follow the true line of her own resolves, until there should be a virtual compliance with their positive requirement, in the first instance, by means of an actual arrangement between the two governments, or the federal government should adopt a course of its own in relation to the survey; and that the sense of the country, it may be inferred, would not be against our proceeding to that extent. Such a course, on the part of Maine, might not be deemed to be unsuitable, in the first place, to maintain her consistency, and to manifest the constancy of the State, and to give a character of completeness and firmness to its action. It comports with the freedom of our political system, and it cannot incur the rebuke of those, who respect the proper authority of the States, while they may not yet rank them as sovereignties."¹

In accordance with the directions of the Legislature, therefore, Governor Kent, September 10, 1838, appointed John G. Deane, Milford P. Norton and James Irish commissioners for ascertaining, running and locating the northeastern boundary. Mr. Deane for many years had given much time and study to boundary questions. He was the author of the very able legislative report of 1828, to which reference was made in a preceding chapter, and was especially well qualified for the service that was required of the commission in securing a personal examination of the boundary line as described in the treaty of 1783. The commissioners were empowered to employ a suitable number of competent men to act as assistants, and were instructed, after all preliminary arrangements had been made, to proceed on the due north line from the source of the St. Croix River towards the height of land where is to be found the northwest angle of Nova Scotia as claimed by the United States and the State of Maine. When they had reached that height of land which divides those

¹*Appendix to the Governor's Message, January 2, 1839, No. 16, 71, 72.*

rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, they were to explore the northern boundary line as far as practicable so as to be certain that they had passed over "the spot where a minutely accurate and scientific survey of the due north line will fix the said North West Angle of Nova Scotia." The leading object of the work of exploration was "to ascertain, by actual examination upon the face of the earth, the practicability of running and locating a due north line according to the treaty and our claim, and to furnish a topographical report of the country, particularly about the north-west angle of Nova Scotia."¹

The commissioners, September 13, 1838, met Governor Kent in Bangor. After a full and deliberate joint consideration of the best and most practicable way of accomplishing the purposes of the commission as indicated in the action of the Legislature, the commissioners concurred in the opinion that the only measure that could be attempted that season with any reasonable prospect of success was an examination and exploration of the region about the northwest angle of Nova Scotia, and, as time allowed, a review of that part of the line of exploration run by the surveyors employed by the American commissioners under the provisions of the treaty of Ghent in 1817 and 1818, preliminary to the commencement of running and locating a meridian line from the monument at the source of the St. Croix River. A consideration that had great weight with the commissioners in adopting this course was the fact that representatives of the British government had so long positively and persistently asserted that no "highlands" could be found dividing the waters running into the St. Lawrence River from those which fall into the Atlantic Ocean, answering in character and location to the highlands described in the treaty of 1783; and especially as even the government of the United States seemed to entertain doubts as to the existence of these "highlands" in the direction of a due north line from the monument at the source of the St. Croix River. Of course, in

¹*Appendix to the Governor's Message, January 2, 1839, No. 19, 90, 91.*

entering upon this service in northern Maine in the closing season of the year, the commissioners did not expect that anything more would be accomplished than a cursory examination of the face of the disputed territory by a party of intelligent observers, attended by a professional surveyor appointed by the governor.

From Bangor, the commissioners' assistants, with the provisions for the whole party, proceeded up the Penobscot and Sebais rivers, whence they "carried" over into the Aroostook River and descended it to the Little Machias River. Two of the commissioners, and Captain William P. Parrott, the surveyor, went by way of the Aroostook River, and the other commissioner by way of Moosehead Lake, the Penobscot and Allagash rivers. From the Aroostook River one commissioner and seven of the men proceeded by way of the Little Machias and Fish rivers; one commissioner and the surveyor descended the Aroostook. All were to meet at the mouth of Grand River, the first river falling into the river St. John from the north, westward of the exploring line and twelve or thirteen miles from it. The party arriving first was to ascend the Grand River without delay, and the others were to follow in succession promptly as they arrived. The first party, in ascending Grand River, left marks and directions at various places by the river, at the portages and on the line. In this way the commissioners, surveyor, laborers and three Indians, fifteen in all, arrived at the "highlands," near Metis River, which empties into the St. Lawrence. There three parties were formed. One explored the "highlands" and streams in various directions. Another explored and surveyed westwardly along the height of land forming the watershed. The third party, under the direction of Surveyor Parrott, took various observations to ascertain the longitude of the exploring line and to determine the magnetic variation; also a vertical survey was made south on the line to ascertain the elevation.

The land at the northern part of the exploring line was found to be sufficiently high to divide the rivers emptying into the St. Lawrence from those falling into the Atlantic Ocean, according

to the language of the treaty of 1783. From the Metis, where it is intersected by the exploring line (called by the surveyors under the fifth article of the treaty of Ghent, Beaver Stream), the land rises more than three hundred feet within about one mile south of it on the exploring line.¹ The land in this region is very high, in large swells and mountainous ridges. Between the Metis and Katawamkedgewic, or the Great Forks, is the highest land found on the whole exploring line north of the monument. This was also the estimate of the surveyors under the fifth article of the treaty of Ghent. The Metis was found to be five hundred and thirty feet above the level of the Katawamkedgewic or Grand Forks where the line crosses it, and in a distance of about fourteen and a half miles. "Within about one mile south from the Metis, on the exploring line, the land rises to an elevation of three hundred and thirty feet above its level, and this is the spot where the rivers are divided, and where the North West Angle of Nova Scotia is to be found."²

The Metis River limited the explorations of the party northward. Southward the line was followed towards the monument, and the report closes an interesting account of the observations made with these words: "It is difficult to imagine a more certain and accurate description of boundaries than that contained in the treaty of 1783, or which, with more certainty, can be applied on the earth's surface. Its monuments are as fixed and certain as the pole and the everlasting hills."³

In his message, January 2, 1839, referring to the commissioners' report, Governor Kent⁴ called attention to the value of the

¹ *Appendix to the Governor's Message*, January 2, 1839, No. 19, 96.

² *Ib.*, 97.

³ *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, IV, 118. The whole report, largely in Mr. Deane's handwriting, covers pages 107-134. The report of the surveyor follows that of the commission, 137-143.

⁴ This message was delivered at the close of his service as governor, it being his duty, according to the constitution, "to give the Legislature from time to time information of the condition of the State."

large and correct map of the northern part of Maine and of the southern portion of Canada, prepared by Mr. Parrott, the surveyor; both the report and map exhibiting the true character of the country and leaving little or nothing, illustrative of it, to be desired.¹

This action of the State of Maine in instituting a new and independent survey of a part of the boundary line in dispute, not unnoticed on the other side of the sea, was followed in 1839 by an arrangement of the British government for an independent survey of a part of the disputed boundary. Information of this action was communicated by Lord Palmerston in a note, July 9, 1839, to the British minister in Washington. "As it appears," he wrote, "by dispatches lately received from you that the negotiation now pending between her Majesty's government and the government of the United States for the appointment of a joint commission of exploration and survey is not likely to be brought to a termination till the latter part of the present year, her Majesty's government have thought that advantage ought to be taken of the present summer, in order to obtain as accurate a knowledge as possible of the nature and configuration of the territory in dispute; and her Majesty's government have accordingly determined to send out immediately competent persons to examine and survey that district, and to make a report thereof for the information of her Majesty's government. Lieutenant Colonel Mudge, of the Royal Engineers and Mr. Featherstonhaugh, have been appointed for this service, and will be accompanied by five or six persons to assist them in their operations. I have to direct you to make known to the government of the United States the nature of the service upon which these gentlemen are about to be employed."²

On July 30th, Mr. Fox, the British minister, informed Mr. Vail, the acting secretary of state, not only of the appointment of Messrs. Mudge and Featherstonhaugh as commissioners for the purpose mentioned in Lord Palmerston's communication, but also

¹*Resolves of Maine, 1839, 144.*

²*Senate Document No. 107, 26th Congress, First Session, 56.*

of their arrival at New York on the 28th, and that they would proceed forthwith to the disputed territory for the performance of the duty assigned to them.

It might be supposed that this new British survey was called for by the attempt on the part of Maine to get the government of the United States to undertake such a work, or by the survey and exploration undertaken by the State of Maine because of the failure of the government to make provision for such a work; but Messrs. Mudge and Featherstonhaugh seem rather to have become interested in boundary service not because the British government wished to use them, but because they had asked to be sent to the boundary country on account of a discovery of certain designated inaccuracies in an American translation of the Latin description of the boundary of the grant of Nova Scotia to Sir William Alexander, and represented by them to be so defective as "to obscure the nature of the claim which her Majesty's government is interested to maintain." Messrs. Featherstonhaugh and Mudge attached great importance to this discovery. "We have discovered," they said, "by a critical examination of the grant of Nova Scotia, 1621, in the original Latin, that the language which describes the western boundary of the territory included in that grant, and which boundary was agreed, at the time of the treaty of 1783, to be the eastern boundary of Massachusetts in conformity with the provision contained in the charter of Massachusetts of 1691, is susceptible of a new interpretation, varying in important particulars from the received one; and we show by a literal translation of the Latin, that the boundary was intended to run from the most western waters of the St. Croix to the sources of the Chaudière; a line, which it has been seen, coincides in a very striking manner with the boundary in the Sieur de Monts grant of 1613."¹ The reader would be wearied by any attempt here to follow the authors in their account of this new interpretation in their endeavor to find a starting point from

¹ Gallatin, *The Right of the United States of America to the Northeastern Boundary*, 1840, 143, 144, 166, 167.

which to trace the "highlands" of the treaty of 1783. As to those "highlands" they admitted that there were "various lines of what have been continuous ridges, leaving only peaks at great distances from each other;" but within what they regarded as the acknowledged boundaries of the United States they mentioned only one "as extending from the Bald Mountains to the Katabdin," and which they said was connected with Mars Hill. Many others, they thought, might probably be found, but they took only two into consideration. The Green Mountains, which run from south to north between the Hudson and Connecticut rivers, divide into two branches on reaching the forty-fourth degree of north latitude. The southern branch, holding its course northeasterly, separates the head waters of the Chaudière from those of the Connecticut, the Kennebec and the western branches of the Penobscot. This was the ridge described by Pownall, and designated in the proclamation of 1763. Toward the east, though at a less elevation, it still formed a part of what they call "the axis of maximum elevation," while from Nictor Lake the ridge again rises towards Bay Chaleurs to the height of two thousand feet; and they conclude: "We therefore present this axis of maximum elevation of the whole country as the true highlands intended by the second article of the treaty of 1783, uniting to the character of 'highlands,' as contradistinguished from lowlands, the condition required by the treaty, of dividing the rivers that empty themselves into the St. Lawrence from those which flow into the Atlantic Ocean, to the northwesternmost head of Connecticut river."¹

But the "highlands" of Messrs. Mudge and Featherstonhaugh, instead of dividing the rivers that empty themselves into the St. Lawrence from those that fall into the Atlantic Ocean, do not, in a straight line for more than two hundred miles, divide the tributary streams of the St. Lawrence from any river whatever. The sources of those streams, from the source of the Chaudière, do not

¹Gallatin, *The Right of the United States of America to the Northeastern Boundary*, 1840, 150, 151.

touch those dividing highlands in their northeastwardly course for the whole of that distance, and do not approach them nearer than one hundred miles for a considerable portion of the line of those highlands. Indeed, instead of dividing the waters of streams flowing into the St. Lawrence from the rivers that fall into the Atlantic, according to the treaty of 1783, they do not "divide, intersect, or touch any other rivers than the St. John and the tributary streams of that river, or of those which fall into the Bay of Chaleurs." In fact, this new line, based on a new discovery, differed only slightly from that traced by the British plenipotentiaries in 1827.¹

In a speech in the Senate of the United States on April 6 and 7, 1846, Mr. Webster, referring to this survey of Messrs. Mudge and Featherstonhaugh, and its remarkable conclusions, said: "A most extraordinary report it was. These gentlemen had discovered that up to that time nobody had been right. They invented a new line of highlands, cutting across the waters of the Aroostook and other streams emptying into the St. John, which, in every previous examination and exploration, had escaped all mortal eyes."²

Of the explorations and surveys thus undertaken, it cannot be said that either added any information of value not already in the possession of the governments of the two countries. Whatever may have been the end sought by Great Britain, there was evidently in this country a strong and increasing desire that a more determined effort should be made to run the boundary line described in the treaty of 1783, and that the commencement of such an effort should be made by an exploration and survey in

¹Gallatin, *The Right of the United States of America to the Northeastern Boundary*, 1840, 151, 152. Early printed copies of the report and map made by Colonel Mudge and Mr. Featherstonhaugh were transmitted to the secretary of state of the United States. See Mr. Fox's letter of June 22, 1840. *Messages and Papers of the Presidents*, III, 595.

²*The Works of Daniel Webster*. Boston, Little & Brown, 1851, 91, 92.

the disputed territory. With this end in view, the Congress of the United States made an appropriation of \$25,000.¹

But this action, important as it was, did not satisfy the desires of the people of Maine. It looked more like a mere concession than a vigorous, resolute movement on the part of the federal government to bring the boundary controversy to a close. Governor Fairfield, who succeeded Governor K. P. Taft in 1839, expressed disappointment and even dissatisfaction with such a limitation of effort. In his annual message to the Legislature he made it very plain that the present state of the controversy would continue much longer. "A struggle of arms is the only and the only arbiter of right between contending parties, and it is too dreadful to be lightly hazarded. But there is a course which forbearance would be more than pusillanimity, and which would be dishonoring our noble ancestry, and committing to the hands of those who succeed us. The general government must be allowed to do what it to be its unavoidable duty to insist upon a termination of the question—peaceably if possible, but at all events, and at all hazards, to see it terminated." Encouragement, however, was not to be found in the attitude of Congress with reference to the controversy; and he assured the members of the Legislature that he would heartily co-operate in whatever course they should determine to be secure to Maine her rights. If circumstances required further communication with them.² Such further communication soon followed.

¹In accordance with this action, James Renwick, James D. Grant, and Talcott, appointed commissioners, were instructed to prosecute the exploration and survey. For the completion of the work Congress added an appropriation of \$75,000 in February, 1841.

²*Civil Government of the State of Maine*, 1839, 19, 20.

CHAPTER XIII.

THE AROOSTOOK WAR.

WHILE boundary matters thus remained unsettled, the earlier exhortations for the exercise of forbearance on the part of the representatives of the two countries in the disputed territory became less and less forceful. With the increase of population, alike in Maine and New Brunswick, both parties were increasingly in evidence, and, as their interests were divergent, clashings naturally followed.

Mr. S. S. Whipple, who had received an appointment as surveyor general of the State of Maine, proceeded in the summer of 1838 to the valley of the Aroostook River with a party of assistants, and was employed in the duties of his office in territory that had long been regarded as clearly within the limits of the State of Maine.¹ June 27, 1838, Mr. James MacLauchlan, a New Brunswick official bearing the title "Warden of the Disputed Territory," addressed a note to Mr. Whipple, informing him that his work appeared to be "in violation of the existing arrangement subsisting between the British government and that of the United States," adding that his instructions made it his duty "to protest against any act implying sovereignty or jurisdiction on the part of any government or state, or of the subjects of any government or state, exercised within the territory in dispute betwixt the two governments of Great Britain and the United States and known by the name of the 'Disputed Territory.'" He accordingly warned Mr. Whipple to desist from further proceedings until the right to that

¹The only United States troops in Maine at this time were three companies, or one hundred and eighteen officers and men, of the first regiment of artillery, at Houlton. *Senate Document No. 35*, 25th Congress, Third Session, 16.

territory had been decided by negotiation on the part of the two governments.¹

In reply, Mr. Whipple informed Mr. MacLauchlan that he was acting, under the authority and by the command of the government of the State of Maine, as a surveyor; but as to the location of settlers in the territory he had no further agency than to note the claims of different persons to certain tracts of land, making a return of the same to the land office in Bangor.² There the matter seems to have rested. Complaints, however, with reference to encroachments upon timber lands within what was regarded as Maine territory continued to reach the authorities of Maine and Massachusetts, and on December 14, 1838, the land agents of both states sent George W. Buckmore to the Aroostook and Fish rivers with instructions to obtain information as to the extent of these depredations and such other facts as might come under his observation in boundary concerns.

On Mr. Buckmore's return, Governor Fairfield, in a confidential message, January 23, 1839, communicated to the Legislature the information which the messenger had secured. A large number of men, he said, many of them from the British province as reported, were trespassing extensively upon the lands belonging to the state, and they not only refused to desist, but defied the state authorities to prevent them from cutting timber to any extent they wished. From forty to fifty men were at work on the Grand River, from twenty to thirty on the Green River, and on the Fish River from fifty to seventy-five. The latter had with them sixteen yoke of oxen, ten pair of horses, and more were expected daily. On township H ten men were at work with six oxen and two horses. Seventy-five men, twenty yoke of oxen and ten horses were found on the Little Madawaska River, and at Aroostook Falls fifteen men with six yoke of oxen. The value of the timber which would be cut that winter by these trespassers was estimated at one hundred thousand dollars.

¹ *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, IV, 41, 42.

² *Ib.*, State Library, IV, 43.

"These facts, it seems to me," added the governor, "present a case in which not merely the property, but the character of the State, is clearly involved. The supremacy of law, as well as the sanctity of right, cannot be thus contemned and set at nought with impunity without impairing the general authority of the government and inviting renewed aggressions on the part of daring and lawless men. Conduct so outrageous and high-handed, as that exhibited by these reckless depredators upon the public property, calls for the most prompt and vigorous action of the government."¹ The governor accordingly recommended that the land agent be instructed to proceed at once to the place of operation on the Aroostook and Fish rivers, with men suitably equipped to seize the teams and provisions, break up the camps, and disperse those who were engaged in the work of devastation and pillage.

The Legislature took action on the same day, directing the land agent to employ forthwith a sufficient force to arrest, detain and imprison all persons found trespassing on the territory of Maine, bounded and established by the treaty of 1783; and the sum of ten thousand dollars was appropriated for the purposes mentioned.²

Under this action of the Legislature the land agent, Rufus McIntire of Parsonsfield, with Major Hastings Strickland of Bangor, sheriff of Penobscot County, and about two hundred men, proceeded early in February to the Aroostook country.³ A few days later they captured about twenty men who had been lumbering farther up the river, also James MacLauchlan (already mentioned as "Warden of the Disputed Territory") and Captain Tibbets, of the Tobique settlement, sending the last mentioned to Bangor. In the night of February 12th, at a house where Mr. McIntire was spending the night, about fifty of the trespassers arrested the land agent, also two citizens of Bangor,⁴ and sent

¹*Civil Government of the State of Maine*, 1839, 148, 149.

²*Ib.*, 1839, 32.

³In this party were Captain Stover Rines and his company from Old Town.

⁴Gustavus G. Cushman and Thomas B. Bartlett.

them to Fredericton, where they were lodged in jail.¹ Colonel Ebenezer Webster, of Orono, was in Woodstock, New Brunswick, on the arrival of Mr. McIntire and the other prisoners, and endeavored to secure their release. Not only was he unsuccessful, but his efforts led to his own arrest and he was sent to Fredericton with the other prisoners and committed to jail.²

Information concerning the arrest of the land agent and other citizens of Bangor was promptly carried to that important and busy community on the Penobscot, and soon reached all other parts of Maine, causing great excitement and awakening feelings of deep indignation. Governor Fairfield, February 15th, in a special message, conveyed to the Legislature the information he had received from the border. The company that arrested the land agent, he said, was at No. 10 on the Aroostook, fortified, and anticipating an attack in case any attempt should be made by the Maine civil *posse* to execute the recent legislative action with reference to timber encroachments. He accordingly advised sending a reinforcement of three hundred men to the Aroostook country, and asked authority to appoint temporarily a land agent in place of Mr. McIntire "to lead on the expedition." The authority was granted, and Mr. Charles Jarvis received the appointment.³

Three days later the governor hastened a second message to the Legislature with reference to border concerns. A proclamation,⁴ issued by the lieutenant governor of New Brunswick February 13th, had come into his hand, stating that a party of armed persons, to the number of two hundred or more, had "invaded a portion of this province, under the jurisdiction of her Majesty's

¹*Civil Government of the State of Maine*, 1839, 151.

²*Maine Historical Society Coll.*, First Series, VIII, 76.

³*Civil Government of the State of Maine*, 1839, 151, 152. Mr. Jarvis joined the land agent's party at what is now Fort Fairfield on February 23rd. There he found ten or twelve companies with company commanders, but no officer of higher rank. The next morning he placed Captain Joseph Porter in command with the rank of colonel, but under his direction. *Bangor Historical Magazine*, II, 123.

⁴*House Document No. 222*, 25th Congress, Third Session, 13.

government, from the neighboring State of Maine, for the professed object of exercising authority, and driving off persons stated to be cutting timber therein." The governor recalled the circumstances connected with this movement of the land agent's *posse*, designated by the lieutenant governor as an "invasion" and "outrage," and asked, "Could a greater indignity be offered to any people having a particle of sensibility to its rights and its honor, or to the sacredness of the personal liberty of its citizens? How long are we thus to be trampled upon—our rights and claims derided—our power contemned—and the State degraded?" What the governor had done, under these circumstances, was mentioned. He had hastened the departure of the reinforcements then assembled at Bangor awaiting orders; and he had issued an order to Major General Hodsdon, commanding the third division of militia, to detach one thousand men by draft or otherwise to rendezvous at Bangor properly officered and equipped, ready to proceed at the earliest possible moment to the place occupied by the land agent's party, there to render such aid as would enable the land agent to carry into effect the resolve of January 24th.¹ The Legislature gave the governor prompt support by the following action:

"Resolved, That the honor and interest of this state demand that a sufficient military force be forthwith stationed at the Aroostook River west of the boundary line of the state as established by the treaty of 1783; and on the river St. John, if found practicable, at such points as may be best adapted to the object, to prevent further depredations on the public lands, and to protect and preserve the timber and other lumber already cut there by trespassers, and to prevent its removal without the limits of the State.

"Resolved, That the sum of eight hundred thousand dollars be and hereby is appropriated for the purpose of enabling the executive to carry out the purposes of the foregoing resolve, and the resolve passed [approved] January 24, 1839. And that the governor be and hereby is authorized, with the advice of the council, to draw his warrant for the same from time to time as it may be needed for that purpose."²

In a postscript Governor Fairfield informed the Legislature that

¹*Civil Government of the State of Maine*, 1839, 152-154.

²*Ib.*, 1839, 42.

since writing his message he had received another communication from Lieutenant Governor Harvey, in which the latter called attention to an alleged agreement by which the British government was to have exclusive jurisdiction and possession of the disputed territory, and urged the withdrawal of the land agent's party, stating that he had directed a strong force of troops to be in readiness to support her Majesty's authority in the disputed territory. "No such agreement as that alluded to by the lieutenant governor can be recognized by us," said Governor Fairfield; "it is an entire misapprehension, to say the least, that such an agreement has ever been made."¹

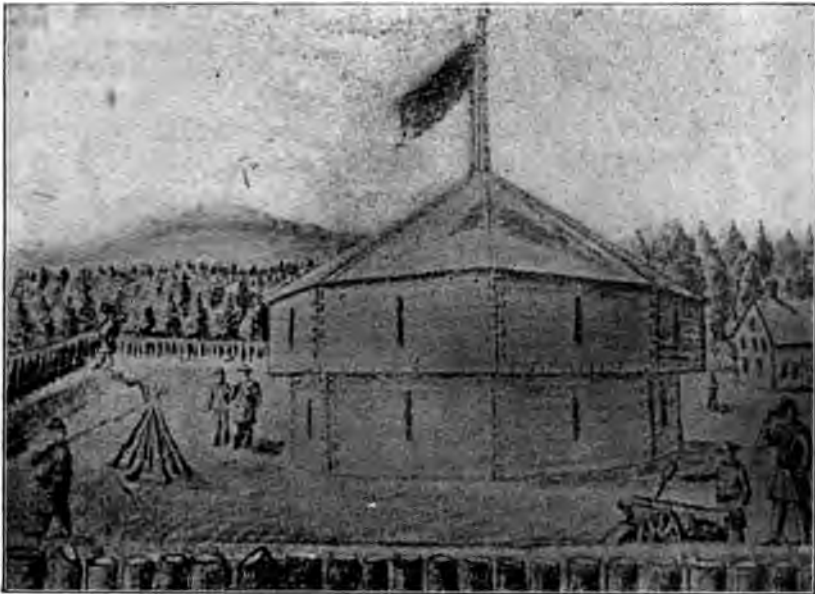
The governor's message and his report of this added communication from the lieutenant governor of New Brunswick, together with the report of the action of the Maine Legislature, found their way at once into every part of the state. No declaration of war could have stirred more deeply the hearts of the people of Maine. The spirit of '76 was again abroad. The state was being despoiled of its valuable timber by the subjects of Great Britain, and those in the service of the state who had resisted such intrusion had been seized and hurried to imprisonment in a British jail. The humorous side of the Aroostook war, as a bloodless war, appeared later. Now, in the lines of a lyric of that time, the cry was,

"Bring out the big gun made of brass,
Which forges July thunder;
Bring out the flag of Bennington,
And strike the foe with wonder."

Thus summoned, men hurried toward the border. It was mid-winter, and only wood roads² through the forest for lumbering purposes led thither. First came the hardy lumbermen, leaving their axes and their logging camps and hurrying to the support of the land agent's party on the Aroostook. Following them came other volunteers from towns, hamlets and farms, men and boys,

¹*Civil Government of the State of Maine*, 1839, 154, 155.

² There was at this time a good road between Bangor and Houlton constructed by the United States quartermaster's department, but it ended there. *Senate Document No. 35*, 25th Congress, Third Session, 13.



FORT FAIRFIELD.

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armed with such weapons as could at once be secured, some of them with muskets used by men from Maine on the battle fields of the Revolution and were with Washington at Valley Forge, or with Pepperrell in the capture of Louisburg in 1745. Later, came the one thousand drafted men called out by the governor's order of February 16th. On February 19th, Adjutant General Thompson declared an added draft of ten thousand, three hundred and forty-three officers and men, including field and staff officers, and directing them to hold themselves, fully armed and equipped, ready for an immediate call into the service of the state.¹ This louder call was answered by an uprising not unlike that witnessed in all parts of Maine a little more than a score of years later at the opening of the Civil War.

On the 21st of February, Governor Fairfield was able to inform the Legislature that reinforcements had already reached the provisional land agent's party on the Aroostook River, and that the draft of one thousand militia had also arrived at the designated place of rendezvous. Other military movements were in progress. The governor also stated that, having learned from Sir John Harvey that Mr. McIntire and his fellow prisoners had been released on parole, pending a reference of the case to the British government, he also had released Mr. MacLauchlan and his assistants on the same terms.² On the following day the governor wrote to President Van Buren concerning the threatening conditions that had influenced the state government in calling out such large reinforcements, inclosing correspondence and a copy of his message to the Legislature;³ and the president on February 26th, in a message to Congress, referred to conditions on the northeastern boundary occasioned by extensive timber depredations undertaken by New Brunswick trespassers on the assumption that an agreement existed between the two adjoining nations conceding to Great

¹*Historical Sketch and Roster of the Aroostook War*, 8, prepared in the adjutant general's office, 1903-1904, and printed by the state.

²*Civil Government of the State of Maine*, 1839, 156.

³*Messages and Papers of the Presidents*, III, 521, 522.

Britain, until the final settlement of the boundary question, exclusive jurisdiction over the territory in dispute. This, he said, was an error. The voluminous correspondence on this point had been carefully examined, but instead of sustaining the British assumption it entirely disproved it. "The State of Maine had a right to arrest the depredations complained of."¹

But while insisting on the right of the State of Maine to arrest "the depredations complained of," the president in his message informed the Senate that he might find it proper to propose to her Britannic Majesty's government a temporary arrangement for the "mutual exercise of jurisdiction" by means of which border troubles would be avoided.² In fact, among the papers transmitted to Congress by the president was a copy of a memorandum, dated February 27, 1839, signed by the secretary of state of the United States and the British minister in Washington, stating terms on which it was believed that boundary collisions could be avoided consistently with the claims of both countries, the agreement having the force of a recommendation only. By the terms of this agreement New Brunswick officials were not to seek to expel by military force the armed party of Maine in the Aroostook country, while the government of Maine, voluntarily and without delay, was to withdraw, beyond the bounds of the disputed territory, any armed force at that time there.³

A motion having been made in the Senate that these papers, communicated by the president, should be referred to the committee on foreign relations, Mr. Williams, of Maine, expressed doubts with reference to Maine's acceptance of such an agreement. Any temporizing expedient in the matter, he said, would avail little. If, however, the agreement should give opportunity for new negotiations, Maine would not complain. The time had come when the United States must bring the controversy to an end by negotiation or otherwise. Maine has her rights and knows them.

¹*Messages and Papers of the Presidents*, III, 517, 518.

²*Ib.*, III, 519.

³*Ib.*, III, 526, 527.

While she desires not to disturb or put in hazard the peace of the country, she cannot much longer suffer an important part of her territory to be in doubt or abeyance.¹ While Mr. Ruggles of Maine, following Mr. Williams, was addressing the Senate, he was informed that there had been an actual collision on the border; that a battle had been fought and blood spilled. There was "great sensation and silence in the Senate for some moments." Then Mr. Webster rose. "I do not believe," he said, "there has yet been collision; I hope there will be none. But I do not wish to see Maine humiliated or disgraced. I believe that if something of her own spirit and feeling had pervaded us here, we should have now been through the controversy. There is yet, I have no doubt, time for pacific adjustment; but England must learn that she has nothing to gain by delay. Delay, while it can benefit neither party, every day endangers the 'peace of both.'"² Before the debate closed, Mr. Ruggles informed the Senate that the report of a collision was unfounded.

The correspondence and documents relating to conditions on the northeastern border were then referred by the Senate to the committee on foreign relations. This committee, on the following day, reported a series of resolutions concerning these boundary disturbances. After stating in the first and second of these resolutions that the committee could discover in the documents and correspondence submitted no trace of any understanding, express, or implied, much less any "explicit agreement" such as was alleged, or that the State of Maine had violated the spirit of any existing understanding by sending, under the authority of the Legislature, her land agent, with a sufficient force, into the disputed territory for the sole purpose of expelling lawless trespassers, the third resolution added: "That should her Britannic Majesty's government, in violation of the clear understanding between the parties, persist in carrying its avowed determination into execution, and attempt by military force to assume exclusive

¹ *Appendix to Congressional Globe*, 25th Congress, Third Session, VI, 258.

² *Ib.*, VI, 259, 260.

jurisdiction over the disputed territory, all of which, they firmly believe, rightfully belongs to the State of Maine, the exigency, in the opinion of the Senate, will then have occurred, rendering it the imperative duty of the president, under the constitution and the laws, to call forth the militia and employ the military force of the United States, for the purpose of repelling such an invasion." A fourth resolution, on the other hand, declared, that should the British authorities refrain from attempting a military occupation of the territory in dispute and from enforcing their claim to exclusive jurisdiction over it by arms, then, in the opinion of the Senate, the State of Maine ought, on her part, to pursue a course of similar forbearance. Should she refuse to do so, and determine to settle the controversy by force, authority for which under the constitution belonged to the federal government, there would be no obligation on that government to sustain her by military aid.¹

On the same day, in the House of Representatives, the committee on foreign relations presented an extended report, denying, against the assertion of the lieutenant governor of New Brunswick, that the United States had ever consented to leave the exclusive jurisdiction of the disputed territory to the British authorities. The pretension was as unreasonable in itself as it was unsustainable by any agreement between the two governments. As to the threatening conditions in that territory, the first appeal to military force was made by New Brunswick, and the subsequent proceedings of Maine were defensive merely. The committee also submitted a bill giving to the president additional powers, authorizing him to resist any attempt on the part of Great Britain to enforce by arms her claim to exclusive jurisdiction over that part of the State of Maine in dispute between the two countries, and to employ, for that purpose, the naval and military forces of the United States and such portions of the militia as he might deem it advisable to call into service; and the sum of ten million dollars² was placed at the disposal of the president for the

¹*Congressional Globe*, 25th Congress, Third Session, VI, 229.

² While the bill was under discussion in the House, Mr. Howard moved to fill the blank in the bill at this place by inserting "ten." Another member

purpose of carrying the bill into effect.¹ The president was also authorized, in case of actual invasion, to accept the services of any number of volunteers not exceeding fifty thousand.²

On March 2nd, when the House bill came up in the Senate for action, Mr. Buchanan, in the course of the debate (there having been some opposition to the proposed appropriation), said: "Should Maine act in accordance with the spirit of these resolutions, then if war must come, it will find the country unanimous. On the part of Great Britain, it will be a war of pure aggression, waged during the pendency of peaceful negotiations for the purpose of assuming exclusive military jurisdiction against the clear understanding between the two governments, over a territory to which she has not even a color of title. In such an event, the only alternative is war or national dishonor, and between these two what American hesitates? All we have to do is to stand on the defensive, and exercise forbearance until the shock of arms shall render forbearance no longer a virtue."³ In the Senate, the House bill was passed unanimously; in the House there were 201 yeas and six nays. The attitude and the action of the State of Maine had again been vindicated.

When the House bill was under discussion, March 1st, Mr. Evans, who had addressed the House at considerable length on the day the president's message was received, now again participated in the debate, replying to Mr. Biddle, of Pennsylvania, who had declared his opposition to the bill, deprecating "the getting up of this comparatively immaterial issue, more particularly as it is by no means certain that we have on it a clear and indisputable case," and asking, "What, then, is our course? To run into a new game of diplomacy about 'exclusive jurisdiction'? To moved "twenty," yet another "five." The highest number was negatived, as also was the lowest, and the blank was filled with the word ten, yeas 95, noes 64. *Congressional Globe*, 25th Congress, Third Session, VI, 243.

¹Ib., 25th Congress, Third Session, VI, 230-232.

²Ib., 25th Congress, Third Session, VI, 244.

³Ib., 25th Congress, Third Session, VI, 239.

shed American blood in an obscure and senseless contest in the Aroostook?" In his reply, Mr. Evans defended the course of the State of Maine in the boundary controversy, and asked, "What will you do in the present exigency? Will you make no demonstration in behalf of our rights? What can you then expect but that the most arrogant demands of Great Britain will be renewed and insisted on? Will you do nothing? Will you leave Maine to herself? Such is the course already predicted by one of the British presses in this country. The United States, they say, will abandon Maine to the consequences of her own folly. We are now to see how that is. I have already told you that Maine is in arms, determined to maintain her rights. She is solemnly pledged on this subject. She cannot retreat. She will most certainly maintain herself in the position she has taken. Will you stand by, and see her cut down? Will any man say that is a result which this nation can witness without disgrace and dishonor? The question for you is, whether she shall be left alone battling for her rights—whether you think that is the way to preserve the peace of the country? You may see her trod in the dust by military power which she cannot resist, if you will; you may see her cut off from the Union, and incorporated with the colonial possessions of a foreign power; but you shall not see her quailing before the enemy, nor abandoning the high ground she occupies, while she can lift an arm to uphold her flag."¹

The secretary of state in Washington, in a letter to Governor Fairfield bearing the same date as the memorandum already mentioned, and inclosing a copy of the same, earnestly urged an acceptance of the recommendation it contained, stating that the president desired it should be complied with by both the State of Maine and the Province of New Brunswick, satisfied that it was in harmony with the original understanding between the United States and Great Britain; and he asked the governor to transmit an inclosed copy of the memorandum to the lieutenant governor

¹*Appendix to Congressional Globe, 25th Congress, Third Session, VI, 278.*

of New Brunswick as soon as it reached him.¹ Both communications were intrusted to the care of Major General Winfield Scott, who was ordered to proceed to Maine. Taking leave of the president, having received his instructions, General Scott said: "Mr. President, if you want war, I need only look on in silence. The Maine people will make it for you fast and hot enough. I know them; but if peace be your wish, I can give no assurance of success. The difficulties in the way will be formidable." "Peace with honor," was the president's reply, and that being General Scott's own wish, as he has recorded, he went on his mission "with a hearty good will."

The general was accompanied by Captain Robert Anderson, later, as Major Anderson, the hero of Fort Sumter, and Lieutenant E. D. Keyes, later Major General E. D. Keyes, a distinguished officer in the Civil War. In Boston, he had an interview with Edward Everett, then governor of Massachusetts.

General Scott, March 5, 1839, reached Augusta, the capital of the state, and at once found himself in a highly excited community. The storm center was the Legislature, but he soon learned that the whole state, from Kittery Point to Quoddy Head, was in an excited state of mind occasioned by the proposed memorandum recently received from the state department in Washington, to which reference has already been made. The particular item in the memorandum arousing general hostility was the recommendation that the State of Maine should voluntarily, and without needless delay, withdraw from the disputed territory any armed force it then had there, thus leaving that territory wholly within the possession and jurisdiction of New Brunswick. What this meant, or easily could be made to mean apart from other items in the proposed memorandum, can easily be imagined. As General Scott viewed the situation at no loss of time after his arrival, the State of Maine and the Province of New Brunswick were very fast approaching a clash of arms. Besides its armed force in the

¹*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, v 241 242

disputed territory, Maine already had a considerable body of troops in the Aroostook country, while General Hodsdon had a detachment of a thousand men from the third division of Maine militia on the way thither; and ten thousand more from the several divisions of the state militia had been ordered to hold themselves in readiness for service on the border. In New Brunswick warlike preparations also were in progress.

In his conversations, General Scott at once found that rival political interests were very much in evidence. A remarkable degree of unanimity had thus far characterized the military preparations that were in progress throughout the state. The members of both political parties had laid aside their differences, and were loyally supporting the state authorities in their purpose to resist encroachments upon Maine territory. But the more he studied the situation at the capitol, General Scott found both Democrats and Whigs wary lest their opponents in some way should secure political advantage. In his endeavors as a peacemaker accordingly he carefully considered ways of approach, and first devoted his attention to the Democrats, then the dominant political party; and by degrees, as he tells us, he won them over, although they hesitated "lest the Whigs should shift about, agitate against any compromise, and thereby regain the state."

General Scott recorded an interesting story of the strategy he employed in one of his successful advances upon the leaders of the Legislature, alluding to the assistance he received from "Senator Evans, just from Washington," and from "the Honorable Albert Smith of Portland, afterwards a member of Congress, who, happening to be in Augusta, gave him the temper and bias of many particular Democrats, whom it was necessary to conciliate."¹ General Scott wrote this story many years after the events to which he referred, and his memory was not wholly accurate. Mr. Evans was not then a member of the United States Senate, and the Honorable Albert Smith, of Portland, was the Honorable F. O. J. Smith, whose presence in Augusta at just that time,

¹*Memoirs of Lieutenant General Scott, Written by Himself*, 344, 345.

doubtless, was not altogether a matter of "happening"; but General Scott's account of the way in which he sought to carry out his instructions may be regarded as substantially correct.

In his work as a peacemaker the general soon found that the memorandum must be set aside as not affording a possible basis for a temporary agreement between the contending parties on the eastern frontier; and he at length suggested to the governor, and some prominent members of the Legislature, the basis for a compromise that had the promise of favorable action on the part of both the Senate and the House. The presentation of this suggestion to the Legislature was left to Governor Fairfield. Accordingly, in a special message, the governor laid the papers he had received from the president and the secretary of state, including the memorandum, before that body. As to the memorandum, he asked instructions, at the same time presenting his own views with reference to it. Replying to the question, "Shall we withdraw our forces agreeably to its recommendation?" he answered with an unhesitating negative. To the terms of the memorandum he saw obvious objections. It would make the state's action, he said, a retrograde movement. "What then shall be done?" he asked. "The people of this State surely are not desirous of hurrying the two nations into a war. Such an event is anxiously to be avoided, if it can be, without dishonor. We owe too much to the Union, to ourselves, and above all to the spirit and principles of Christianity, to bring about a conflict of arms with a nation having with us a common origin, speaking a common language, and bound to us by so many ties of common interest, without the most inexorable necessity. Under these circumstances I would recommend that, when we are fully satisfied, either by the declarations of the Lieutenant Governor of New Brunswick, or otherwise, that he has abandoned all idea of occupying the disputed territory with a military force, and of attempting an expulsion of our party, then, the Governor be authorized to withdraw our military force, leaving the land agent with a sufficient *posse*, armed or unarmed, as the case may require,

sufficient to carry into effect your original design, that of driving out or arresting the trespassers, and preserving and protecting the timber from depredations. From such an act of jurisdiction—an attempt so right and proper in itself, and so imperatively called for by the circumstances of the case, we should not be driven by any power on earth. We ought not, however, wantonly to do *more than is necessary*. We want no military force in the territory, if there be no military force against us.”¹

By the governor’s message, following General Scott’s personal efforts as a peacemaker, the way was prepared for action by the Legislature; and a resolve was adopted March 23, 1839, authorizing the governor, when satisfied that the lieutenant governor of New Brunswick had abandoned all intention of occupying the disputed territory with a military force, to withdraw the Maine militia, leaving the land agent with a sufficient *posse*, armed or unarmed, carrying the resolve into effect.²

Meanwhile General Scott had undertaken peace efforts with Lieutenant Governor Harvey, of New Brunswick. In the war of 1812, the general had made the acquaintance of the lieutenant governor, then a lieutenant colonel in the British army in Canada, and had been able to do him a kindness. The acquaintance formed in this way was continued after the war, and it was now of service to General Scott in securing Sir John Harvey’s agreement to the proposed arrangement. General Scott’s letter to the lieutenant governor was dated “Headquarters, Eastern Division,³ United States Army, Augusta, Maine, March 21, 1839, and contained the following proposition:

“That it is not the intention of the Lieutenant Governor of her Britannic Majesty’s Province of New Brunswick, under the expected renewal of negotiations between the Cabinets of London and Washington, on the subject of the said disputed territory, without renewed instructions to that effect from his government, to seek to take military possession of that territory, or to

¹ *Resolves of Maine*, 1839, 164, 165.

² *Ib.*, 1839, 113, 114.

³ It will be remembered that General Scott’s force, present for duty, consisted of one captain and one lieutenant.

seek by military force to expel therefrom the armed civil *posse* or the troops of Maine."¹

This proposition received the assent of the lieutenant governor of New Brunswick. In a letter to General Scott, March 23, 1839, Sir John Harvey wrote: "I was gratified by the receipt of your very satisfactory communication of the 21st instant. My reliance upon you, my dear General, has led me to give my willing assent to the proposition which you have made yourself the very acceptable means of conveying to me; and I trust that as far as the Province and the State respectively are concerned, an end will be put by it to all border disputes, and a way opened to an amicable settlement of the national question involved."

On the 25th of March, because of General Harvey's agreement, Governor Fairfield signified in the following words his acceptance of the proposition conveyed to him by General Scott:

"That in the hope of a speedy and satisfactory settlement, by negotiation, between the governments of the United States and Great Britain it is not the intention of the Governor of Maine, without renewed instructions from the Legislature of the State, to attempt to disturb by arms the said Province in the possession of the Madawaska settlement, or to interrupt the usual communications between that Province and her Majesty's Upper Province; and he is willing, in the meantime, to leave the questions of possession and jurisdiction as they at present stand, that is, Great Britain holding, in part, possession of a part of the said territory, and the government of Maine denying her right to such possession; and the State of Maine holding, in part, possession of another portion of the same territory, to which her right is denied by Great Britain. With this understanding, the Governor of Maine, will without unnecessary delay, withdraw the military force of the State from the said disputed territory, leaving only, under a land agent, a small civil *posse*, armed or unarmed, to protect the timber recently cut and to prevent future depredations."²

In this mutual understanding thus accomplished, the British claim of "exclusive jurisdiction" in the disputed territory received no recognition, one part of the territory, the Aroostook country,

¹*Manuscript Correspondence, etc., Northeastern Boundary*, State Library, IV, 327, 329, 331.

²*Ib.*, State Library, IV, 328, 329.

remaining in the possession of Maine, while another part, the Madawaska country, was left in the possession of New Brunswick.¹

On March 30th, Major General Hodsdon, in command of the state troops on the northeastern border, was ordered to leave one company of light infantry, one company of riflemen and two companies of infantry, under command of a field officer, at Fort Fairfield, for the purpose of protecting the public property until a sufficient civil force could be procured by the land agent; while General Hodsdon, with the remaining portion of the detachment, was directed to report forthwith at Bangor, where the troops were discharged on April 26th.² On April 4th the companies stationed at Calais were discharged, while the companies left in the Aroostook country, relieved by civilians, were discharged late in April or early in May, on their arrival at Bangor. The whole number of troops, whose services were required for the protection of the border, numbered three thousand, three hundred and thirty-nine officers and men, who were in the service from twenty-one days to two months and twenty-five days.³ With their discharge the

¹ This relinquishment of the British claim to exclusive jurisdiction, brought about by General Scott, and in accordance with which the disputed territory south of the St. John River came under the control of Maine officials, was regarded, at least by some close observers in England, as fatal to the British case.

² Earthworks were thrown up on Fort Hill probably while the state troops were at what is now Fort Fairfield, then so named in honor of the governor of Maine. There was also a blockhouse and a barrack building on the hill, the whole then known as Fort Fairfield. There was also a blockhouse on the bank of the Aroostook River, a short distance north of the other blockhouse. Both blockhouses long since had their day even as memorials; but the old barrack house, removed from the original site, still serves tenants, and a few grassy furrows on the brow of Fort Hill yet remain as the visible signs of Fort Fairfield's part in the Aroostook war. The blockhouse at Fort Kent, which is still standing, is said to have been erected in 1841, and was named for Governor Kent.

³ *Adjutant General's Report*, 1839, 20, 21. In 1904, in accordance with a council order passed November 24, 1903, an historical sketch of the Aroostook war, and a roster of commissioned officers and enlisted men called into service for the protection of the northeastern frontier of Maine, from Febru-



BLOCKHOUSE AT FORT KENT.



“Aroostook war” ended. There was no more encroachment on the timber lands of Maine, and there was no further seizure of Maine land agents or imprisonment of Maine citizens. What was intended had been accomplished.

ary to May, 1839, was prepared in the office of the adjutant general of Maine and published by the state. The detail of the detachment made by order of Governor Fairfield, February 19, 1839, called for ten thousand, three hundred and forty-three men. The names of both officers and men actually called into service at Aroostook are given in this record.

CHAPTER XIV.

COMPLAINTS UNDER THE NEW AGREEMENT.

THE new agreement with reference to the exercise of jurisdiction in the disputed territory was not followed by those harmonious relations along the border which some at least supposed, or hoped, had been secured. As has already appeared, it was not such an arrangement as the British minister and the secretary of state had proposed. The British minister had no specific authority for attaching his signature even to the rejected memorandum, while the lieutenant governor of New Brunswick, in declaring in the agreement that it was not his intention to seek to take military possession of the disputed territory, or to seek by military force to expel from that territory the armed civil *posse* of Maine, did so with the qualifying words, "without renewed instructions to that effect from his government." In fact, as early as November 6, 1839, Mr. Vail, the acting secretary of state at Washington, called the attention of Governor Fairfield to a communication¹ he had received from Mr. Fox, the British minister, protesting in the name of the British government against certain alleged acts of encroachment on the part of the people of Maine, which from his point of view were regarded as at variance with the agreements of the preceding March. First, the armed *posse*, stationed in the disputed territory for the protection of public property, had extended its territorial occupation to the mouth of Fish River, and accordingly, it was claimed, into a portion of the Madawaska settlements. Second, the armed *posse* had assumed an aspect and character decidedly military, something more like a permanent national possession of the country, the land agent's station being fortified with can-

¹*Senate Document No. 107, 26th Congress, First Session, 57-59.*

non and entrenchments. Third, the road under construction to Fish River was a road connecting Bangor with the disputed territory. Fourth, surveyors, acting under state authority, were locating lots and townships and making sales of land in that portion of the territory. Because of these complaints, the governor was reminded by the president of his anxious desire that nothing should be permitted to call in question the faithful observance of existing agreements, and he asked the governor for such information in relation to the acts above mentioned as were in the possession of the government of Maine.¹

In his reply, November 21, 1839, Governor Fairfield informed the president that the first of these complaints had reference to the fact that the land agent of the state had sent a small force to Fish River to disperse a band of trespassers operating in that locality. Their camps were broken up, some of the trespassers were driven off, and a few, with their teams, were brought to the Aroostook settlement, though subsequently they were released. Later, another force was sent to the mouth of the Fish River to construct a boom at that point to prevent other depredations. This proceeding, said the governor, in no wise violated the arrangement made by General Scott. The agent had a right to go anywhere in the American portion of the disputed territory to protect timber recently cut and to prevent future encroachments. As to the military character of these proceedings, the members of the land agent's armed *posse* were neither militia nor United States soldiers, but hired laborers, protecting public property. "At all events," remarked the governor, "the complaint at the extent of this force was hardly to have been expected from the British government just at this moment, when a few days only have elapsed since some fifty of its own subjects, bearing the queen's arms, and otherwise suitably equipped, headed by a veteran militia captain, made an assault, in the dead of night, upon that very force

¹*Senate Document No. 107*, 26th Congress, First Session, 49, 50. Also *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, IV, 276-280.

which is now described as 'greater than the occasion would warrant.''' As to the third complaint, it was true that a road was in process of construction, and was passable with some vehicles the whole way. But this was no new thing. An appropriation for the road was made by the Legislature as early as 1826. Moreover, with no propriety could this be made a matter of complaint, when Great Britain was constructing a permanent mail road through the disputed territory north of the St. John. Finally, with reference to marking out lots and townships and selling them, all this had been done upon the Aroostook for many years. Certainly, the boundary question had not advanced far in the way of settlement if the people of Maine could not still do what they had done so long without any remonstrance from the British government.¹

Added facts concerning this action on the part of British officials along the border soon reached Governor Fairfield, and on December 12th he called Sir John Harvey's attention to this violation of the understanding existing between New Brunswick and Maine, according to statements published in New Brunswick newspapers, in which mention was made of two British regiments, said to have been stationed at Temiscouata Lake in the disputed territory; and he asked if there was any foundation for these newspaper statements. Sir John Harvey, in reply December 19th, cleared himself of any connection with such action by saying that "whatever movements of troops may have taken place on this side of Lower Canada have been made by authority superior to mine." He was of the opinion, however, that the force mentioned consisted not of two regiments, but of one or two companies, sent for the protection of certain buildings that had been constructed for the accommodation of British troops on their march between Lower Canada and the maritime provinces, and for the storage of provisions deposited for their use. However, he would transmit the governor's letter to the Canadian authorities, who,

¹*Senate Document No. 107, 26th Congress, First Session, 50-53, 59-62.*

he believed, were as anxious as he that the agreement arranged by General Scott should be scrupulously observed.¹

On receiving Sir John Harvey's letter, Governor Fairfield, December 23, 1839, sent to President Van Buren the correspondence concerning this establishment of a British military post in the disputed territory, and asked, even though the orders had been issued by the governor of Lower Canada, "whether the contingency contemplated by the act of Congress, March 3, 1839, had not occurred, showing an invasion of the State of Maine which it was the duty of the general government to repel." He was informed, he said, that the British government was erecting barracks upon both sides of the St. John River, near the mouth of the Madawaska, and that troops were concentrating at Grand Falls.²

Mr. Forsyth, the secretary of state, replying to this communication January 2, 1840, informed Governor Fairfield that a report concerning this alleged occupation of the disputed territory by British troops had reached the president from another source, and that an explanation had been requested from the British minister.³ January 12th, the latter expressed regret that Maine's explanations with reference to recent encroachments were altogether unsatisfactory to the government of Great Britain, while as to Maine's complaints of British encroachments, the particular motives of the movement mentioned had been explained to the governor of Maine "in a frank and satisfactory manner," in correspondence which had been made public; and he added that with regard generally to the reinforcement of military posts and other defensive and precautionary measures, whether along the confines of the disputed territory, or within that portion of it, where according to provisional agreements the authority of Great

¹*Senate Document No. 107, 26th Congress, First Session, 55. Also Manuscript Correspondence, etc., Northeastern Boundary, State Library IV, 284-286.*

²*Senate Document No. 107, 26th Congress, First Session, 55.*

³*Ib., 55. Also Manuscript Correspondence, etc., Northeastern Boundary, State Library IV, 288, 289.*

Britain was not to be interfered with, the adoption of such measures as were mentioned could not reasonably be made the subject of complaint by the United States, "when regard is had to the reports which have for some time past been circulated (and of the prevalence and consistency of those reports the United States government are themselves fully aware) respecting the probable intention of the Legislature of the State of Maine to revoke, during the present session, the provisional agreements now in force, and to authorize some new and extensive act of aggression over the stipulated territory." And the British minister closed this somewhat remarkable statement with an expression of regret "to observe that the language of the governor of Maine, in his recent message to the Legislature, at the opening of the session, is calculated to encourage rather than to restrain such rash and obnoxious designs."¹

Governor Fairfield's message, to which allusion was made by the British minister, was delivered January 3, 1840. That part of the message which received from Mr. Fox such strong words of condemnation was apparently the following: "The long pending question in relation to our northeastern boundary is still open and unadjusted, though we have reason, perhaps, for believing that it has made some advances during the past year. We have had a renewed expression of opinion on the part of the general government that the territory in dispute is *a part of the State of Maine*—an indication of a determination to discharge, in good faith, the duty of that government to this State, of maintaining the integrity of its territory and a national sanction of the military demonstrations made by this State in February and March last. It is also well understood now by all parties, that however patient and forbearing Maine will be while honest and earnest attempts are being made to run the line and definitely settle the question, she will not submit longer to be deprived of her territory by such a system of vexatious and unjustifiable procrastination as has heretofore been practiced; and that the question must be settled

¹*Senate Document No. 107, 26th Congress, First Session, 62, 63.*

speedily, in some way or other, if hostilities are to be avoided. This is gaining something. When parties are fully aware of the precise position they occupy, the next step taken by them will be taken understandingly, whatever else may be said of it. Again, the occurrences of last winter seemed to awaken the attention of the country to the momentous importance of the question, and to induce such an examination of it as to result in a strong and universal conviction that the pretense of claim set up by Great Britain to the disputed territory is palpably unfounded and unjust, and can be persevered in only through an utter disregard of the plain and unambiguous terms of the treaty of 1783.¹ The views which I have presented in this communication upon the subject of the boundary were those entertained independently of what is now an ascertained fact, to wit, that our territory is actually invaded, and of course are to be modified by that circumstance. Official information of that fact was received by me a few days since while on my way to this place,² in a reply of the Lieutenant Governor of the Province of New Brunswick to a letter of inquiry addressed to him by myself in relation to this subject. It is admitted that one or two companies of British troops have been stationed at Temiscouata Lake, but it is alleged by the Lieutenant Governor to have been done, not by his own orders, but by the authorities of Lower Canada. This movement, I cannot but regard, under whatever branch of British authority, or on whatever pretense it may have been made, not only as a violation of the spirit of the arrangement agreed upon in March last, but as clearly an invasion of territory. Under these circumstances I deemed it to be my duty immediately to communicate the facts to the President of the United States, with other though less official information received, of the building of barracks by the British government on both sides of the St. John, near the mouth of the Madawaska river, which I did, calling officially for that action on the part of the general government which the case required

¹*Resolves of Maine*, IV, 235.

²Augusta.

and the Constitution and laws of the United States clearly enjoined."¹

In these words addressed to the Legislature of Maine, Mr. Van Buren, the president of the United States, found so little evidence of "rash and obnoxious designs" that he directed the secretary of state to say to the British minister that he could perceive no reason for doubting the disposition of the governor of Maine scrupulously to adhere to the spirit of the existing arrangements, and to avoid all acts tending to render more difficult and distant the final adjustment of the main question with reference to the boundary; "while the persistence in, or a repetition of, such acts on the part of her Majesty's agents as those now complained of, would, if assumed by Great Britain, be considered as but little in accordance with those assurances."²

January 26th, the British minister reiterated his denial of any infringement of the terms of agreement by British action, saying, "It appears from accurate information, now in the possession of the undersigned, that the Governor of Maine, and, through him, the President and general government of the United States, have been misinformed as to the facts. In the first place, no reinforcement has been marched to the British post at Lake Temiscouata; the only change occurring there has been the relief of a detachment of her Majesty's Twenty-fourth regiment by a detachment of equal force of the Eleventh regiment; this force of one company being now stationed at the Temiscouata post, as it always has been, for the necessary purpose of protecting the stores and accommodations provided for the use of her Majesty's troops, who may be required, as heretofore, to march by that route to and from the provinces of Canada and New Brunswick. In the second place, it is not true that the British authorities either have built, or are building, barracks on both sides of the St. John river, or at the mouth of the Madawaska; no new barracks have in fact been built anywhere. In the third place, her Majesty's

¹*Resolves of Maine*, IV, 239, 240.

²*Senate Document No. 107*, 26th Congress, First Session, 65.

authorities are not concentrating a military force at the Grand Falls; the same trifling force of sixteen men is now stationed at the post of the Grand Falls which has been stationed there for the last twelvemonth." While, however, Great Britain had no intention to infringe the terms of agreement recently accepted, Mr. Fox held it to be his duty, he said, to say that in view of the attitude of the State of Maine, her Majesty's authorities in North America, as at present advised, would be governed entirely by circumstances in adopting such measures of defense and protection as would seem to them necessary.¹

Such a proclamation of purpose from the representative of Great Britain in Washington carried with it little hope of peaceful conditions on the northeastern border according to lessons from past experiences. While awaiting further information from Maine, having forwarded Mr. Fox's letter to Governor Fairfield with other documents, the secretary of state, in his reply to Mr. Fox on January 28th, informed him that the president could not repress a feeling of regret that the British colonial authorities, without graver motives than the possibility of Maine's departure from the agreement arranged by General Scott, should take upon themselves the discretion, and along with it the fearful responsibility, of the probable consequences; and he hoped that when the home government should be apprised of the position thus assumed, proper steps would be taken "to place the performance of express and solemn agreements upon a more secure basis than colonial discretion to be exercised on apprehended disregard of such agreements on the part of the State of Maine."²

Mr. Fox's letter, when printed in Maine newspapers, stirred anew deep public feeling, and the governor, before communicating again with the president, called for added information from the disputed territory. When this was received, writing again to President Van Buren, he made mention of the profound astonishment with which the letter of the British minister had been read,

¹*Messages and Papers of the Presidents*, III, 569.

²*Ib.*, III, 570.

and inclosed depositions from a number of citizens of Maine, showing from personal knowledge that up to the preceding May, nearly two months subsequent to the arrangement entered into through the mediation of General Scott, no troops whatever were stationed at Temiscouata Lake; that in August, September and October, the number did not exceed twenty-five, while now it had been increased to about two hundred; that prior to May no barracks had been erected at Temiscouata, but since that time two had been built at the head of the lake, besides five or six other buildings, apparently adapted to the establishment of a permanent military post; and at the foot of the lake two or more buildings for barracks and other military purposes; that, though no new barracks had been erected at Madawaska, certain buildings heretofore in use had been secured for barrack purposes; that a road had been constructed connecting the military post at the head and foot of the lake; a tow path had been made along the Madawaska River; the road from the head of the lake to the military post at the river Des Loups had been thoroughly repaired; transport boats also had been built.¹

Governor Fairfield also sent Benjamin Wiggin, of Augusta, to Madawaska and Temiscouata Lake, where, "by actual observation," he obtained the following information, which was communicated to the governor February 27, 1840: Twenty-two miles below the mouth of Fish River, on the south side of the St. John, and nearly opposite the mouth of the Madawaska, a house had been turned into a barrack and rented for that purpose by the British government, but there were no troops there at that time. It was built of hewn timber, two stories high, about sixty feet long and thirty wide, with bunks for more than one hundred men. A tow path on the east side of the Madawaska River had been made during the past season. Two and one-half miles below the foot of Temiscouata Lake, on the west bank of the Madawaska

¹ The depositions to which the governor referred, and which accompanied his letter, were made by Phineas Varnum, Thomas Bartlett, of Orono, and Mark Little, of Bangor. These were printed in *Senate Document No. 266*, 26th Congress, First Session, 6-9.

River, the British had erected early in the preceding summer a barrack about eighty feet long and thirty feet wide, and two small outbuildings. At this post there were now stationed a sergeant, a corporal and five privates of the eleventh regiment of the British army. Near this point commenced a road nearly completed, connecting the post with the post fifteen miles from the foot of Temiscouata Lake, where the British had erected eight buildings as barracks for soldiers, officers' quarters, a hospital, magazine, storehouse and commissary's house, all of which were surrounded by a ditch, breastworks, and stockades on three sides. The fourth side was not then completed. A plan of the works was attached to the report. From Major Chambri, the officer in command, Mr. Wiggin, having stated the purpose of his inquiry, learned that he had under his command a grenadier company of the eleventh regiment, about eighty-five men, a company of light infantry, of the same regiment, about ninety men, in all one hundred and seventy men, not including commissioned officers or servants. The barracks were commenced in the preceding spring, and some of the buildings were still unfinished. The first soldiers stationed there came in June last, comprising a sergeant, corporal and ten men of the twenty-fourth regiment, and in November following, the company of grenadiers were ordered to take their place. About the first of January they were reinforced by the third company. The statements with reference to the construction of road, and flat-bottom boats for the transportation of troops on the lake, were corroborated.¹

This report, with the depositions mentioned, was sent to Washington by Governor Fairfield. In forwarding the report and other papers to the British minister, March 6th, Mr. Forsyth remarked that the statements contained in them exhibited a striking discrepancy as to the troops mentioned, compared with those who were there when the arrangement was made by General Scott,

¹A plan of the fort with the location of the houses accompanied the report. *Manuscript Correspondence, etc., Northeastern Boundary*, State Library, IV, 319-321.

and also with the present and former state of the buildings there. These extensive accommodations, prepared and preparing at old and new stations, the works finished and in the process of construction, were not in accordance with the assurance that the only object in view was the preservation of a few unimportant buildings and storehouses for the temporary protection of the number of troops that any ordinary service could require to pass on the road from New Brunswick to Canada.¹

Mr. Fox, in his reply on the following day, however, reaffirmed his previous statements concerning the barracks and other buildings at Lake Temiscouata, and also as to the military force there, though he admitted that he would have been more correct technically if he had made the British detachment at that point to consist of from one to two companies instead of one. The British authorities had not strengthened their military arrangements in the disputed territory, he still claimed, while he reiterated the suggestion that the adoption of such measures as were now made the subject of complaint by the United States would sooner or later become indispensable if the people of Maine were not compelled to desist from a system of armed aggression which they were maintaining in other parts of the disputed territory.² On March 25th, Mr. Fox again addressed a note to Mr. Forsyth, instructed by the British government to protest against acts of encroachment persisted in by the State of Maine, and publicly avowed with the expressed expectation that the people of Maine would "replace themselves in the situation in which they stood before the agreements," retiring from the valley of the St. John and confining themselves to the valley of the Aroostook, adding that as long as these acts of aggression were continued, her Majesty's government would regard it a duty to make such military arrangements as should seem to be required, while if collision between the troops of the two countries should result, the respon-

¹*Senate Document No. 266, 26th Congress, First Session, 12.*

²*Ib., 26th Congress, First Session, 12-14.*

sibility would rest with the people and government of the United States.¹

In his reply, Mr. Forsyth expressed disappointment on the part of the president at this continued imputation "to a portion of the people of the United States" of designs "which have never been entertained, and which Mr. Fox knows would receive no countenance from this government"; and reviewing the British complaints of encroachment he insisted that it was "in the exercise of a legitimate right, and in the conscientious discharge of an obligation imposed upon her by a solemn compact," that the State of Maine had given attention to matters which had been made the occasion of complaints "for which no adequate cause is perceived." As to the advance of the Maine *posse* along the Aroostook valley to the mouth of Fish River, and into the valley of the upper St. John, it had already been explained "why the mouth of Fish river, and the portion of the valley of the St. John through which it passes, could in no proper sense be considered as embraced in the Madawaska settlements." To give those settlements such a degree of constructive extension as was now claimed by her Majesty's colonial authorities might soon, under like demands, be made to embrace any portions of the disputed territory. With such a claim as within the meaning of the agreement, it would be difficult to conceive of any limitations to the pretensions of her Majesty's government, or of any way in which "the State of Maine could exercise the preventive power with regard to trespassers, which was, on her part, the great object of the temporary arrangement." A still graver aspect to the matter was given by the military operations left unsatisfactorily accounted for by Mr. Fox, and therefore an abiding cause of complaint on the part of the United States, as inconsistent with arrangements whose main purpose was to divest from embarrassment a question already sufficiently perplexed and complicated. Maine's conduct, he declared, contrasts most favorably with that of the colonial authorities. Her military force was promptly withdrawn, only a

¹*Senate Document No. 319, 26th Congress, First Session, 1, 2.*

small *posse*, armed as agreed upon, being left, and used for no act unnecessary to the accomplishment of the conventional objects; while the other party is essentially military in its character, and could be justified only by a well-founded apprehension that hostilities must ensue.

Accordingly the president could not but view with surprise, Mr. Forsyth said, the attempt of Mr. Fox, under instructions from his government, to give to the existing state of things a character not warranted by the friendly disposition of the United States, or the conduct of the authorities and people of Maine. But he was much more surprised to find that present conditions were made an occasion for strengthening the British military force on the border, thus preparing for a hostile collision with the unarmed inhabitants of a friendly state. No apprehension of the consequences mentioned by the British minister, however, would be "permitted to divert the government of the United States from the performance of their duty to the State of Maine. That duty is as simple as it is imperative. The construction which is given by her to the treaty of 1783 has been again and again, and in the most solemn manner, asserted by the federal government, and must be maintained, unless Maine freely consents to a new boundary, or unless that construction of the treaty is found to be erroneous by the decision of a disinterested and independent tribunal selected by the parties for its final adjustment."¹

Evidently there was need of an expression of these calm yet forceful words at the capital of the nation. Maine was asserting her own convictions with reference to the situation upon the border in language no less forceful and as easily understood. On March 18, 1840, the governor of Maine approved resolutions adopted by the Legislature, declaring that unless the British government, during the present session of Congress, should make a distinct and satisfactory proposition for the immediate adjustment of the boundary controversy, it would be the duty of the general government to take military possession of the disputed territory;

¹*Senate Document No. 319, 26th Congress, First Session, 2, 6.*

otherwise it would become the imperative duty of Maine to assume the defense of the honor of the state and nation, and to expel from her territory the British troops who were quartered there.¹ In brief, it was felt that the crisis was near in which the long standing issue with Great Britain concerning the boundary of the treaty of 1783 would be settled either by negotiation or by the ultimate resort.

¹*Resolves of Maine, 1840, 226, 227.*

CHAPTER XV.

PROJECTS AND COUNTER-PROJECTS.

UNQUESTIONABLY there was occasion for renewed diplomatic activity. Clashings and complaints on both sides of the border emphasized the importance of a prompt settlement of the boundary controversy in order to avert, not only added and more serious disturbances but another war, which could not but be regarded, in England as well as in the United States, as most deplorable from every point of view. Accordingly, there were movements having such an end in view. March 15, 1839, the secretary of state in Washington informed the American minister in London that the recently arrived secretary of the British legation had let it be known, evidently by authority, that before he left London he had seen, in the foreign office, a *projet* of a convention for exploration and survey, which was intended to be proposed to the United States.

The American minister, in a letter to Lord Palmerston, March 30, 1839, urged the desirability of such a prompt and speedy settlement of the long pending controversy between the two countries. Referring to the embarrassing conditions recently existing on the borders of Maine and New Brunswick, he said that passions, highly exasperated under impressions of injury and wrong, could have no other effect than to protract and embitter a contention which otherwise might be happily terminated; and he called attention to a special mission to Great Britain, for which provision was made by recent action of Congress, informing the prime minister that he had been directed to announce to the British government the willingness of the president of the United States to institute such a mission for the purpose of hastening or facilitating the proposed settlement.¹

¹*North American Boundary, Part I. Correspondence Relating to the Boundary between the British Possessions in North America and the United*

In his reply, April 3d, Lord Palmerston took the ground that if the two governments were at liberty to arrive at a final and immediate settlement of the controversy by a conventional division of the territory in dispute, the British government would be of the opinion that advantage might arise from the proposed mission; "but Maine having refused to agree to a conventional line, and another reference to arbitration being in the present state of the matter out of the question," the only course left open for the two governments, as it seemed to him, was to cause a fresh survey of the territory to be made, for the purpose of endeavoring to trace upon the earth the line of the treaty of 1783. The special mission, proposed by the United States, was therefore declined; and Lord Palmerston submitted the draft of a convention for the purpose of regulating the proceedings of the commissioners to be appointed by the two governments for this end, in the hope, he said, that the report of these commissioners would either settle the question at issue, or furnish to the two governments such information as might lead directly to a settlement.¹

In this note, referring to the attitude of Maine in the recent border troubles, Lord Palmerston made mention of "proceedings on the part of Maine, planned and decided upon in secret, executed suddenly, without previous notice, and so conducted that if it had been the intention of the government of Maine to provoke a conflict better means could not have been devised to attain that end." Mr. Stevenson, the American minister, in his reply, respectfully made known to Lord Palmerston his painful regret that the prime minister should have expressed such an opinion. "Regarding the proceedings and conduct of Maine in a light wholly different from that supposed by his Lordship, the undersigned deems it proper to say, that he has seen nothing in the history of these proceedings which would seem to justify the opin-

States of America, under the Treaty of 1783. Presented by both Houses of Parliament by Command of Her Majesty, July, 1840. London, printed by T. R. Harrison, 60-62.

¹ *Ib.*, 62, 63.

ion expressed by his Lordship in reference to the conduct of the authorities of Maine. The government of Maine had doubtless acted under the high obligations of duty. They felt the necessity of protecting themselves from the unjust operation of measures with which they had been threatened by the British colonial authorities, and with that view took the steps that were finally adopted. . . . To regard those proceedings in any other light than defensive would be doing injustice not only to the government of Maine, but to the patience with which its people have endured, and the moderation with which they have sought, in the vindication of what they believed to be their just rights, to guard against collision or disagreements between the two governments."¹ Certainly, no citizen of Maine, with greater firmness and dignity, could have defended his state against these unjust reflections, made by the prime minister of England, than did the American minister in London.

The British proposition for a new exploration and survey, proposed by Lord Palmerston, was attended by such limitations and conditions as to cause its immediate rejection on this side of the sea; and in the course of the summer following a counter-project was submitted to Great Britain by the United States. This counter-project included a provision for the certain and final adjustment of the limits in dispute; and it was still before the British government for consideration, when President Van Buren laid his third annual message before Congress, December 2, 1839. "A just regard to the delicate state of the question," said the president, "and a proper respect for the natural impatience of the State of Maine, not less than a conviction that the negotiation has been already protracted longer than is prudent on the part of either government, have led me to believe that the present favor-

¹*North American Boundary, Part I. Correspondence Relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783. Presented by both Houses of Parliament by Command of Her Majesty, July, 1840.* London, printed by T. R. Harrison, 63, 64.

able moment should on no account be suffered to pass without putting the question forever at rest."¹

The resolutions adopted by the Maine Legislature March 18, 1840, and some recent diplomatic correspondence from the office of the secretary of state in Washington, were laid before the senate committee on foreign affairs. While the committee had these papers under consideration, there was a discussion in the House of Representatives,² in which Mr. Wise, of Virginia, urged attention "in the face of a war," to national defense, every portion of the frontier, he said, being exposed. Mr. Adams,³ of Massachusetts, deprecating war, expressed the hope that the differences of the two nations might be settled by arbitration. No nation, he claimed, could refuse to adopt such a course. The British government, he believed, would accept such a proposition, if not from compulsion, at least from motives of policy. The only doubt he entertained had its source in a fear that the impatience and impetuosity of the people of Maine might lead them to commence hostilities, that would involve the nation. Mr. F. O. J. Smith, of Maine, in reply to Mr. Adams, referred to the latter's change of attitude. Not long before, said Mr. Smith, he was found sustaining the military operations of Maine on the ground that they were justifiable. Maine was right in her contention. He now holds that a similar course would be rash and indiscreet. For his own part, continued Mr. Smith, he could not distinguish between an invasion of Maine last year and a military occupation this year. Certainly there had been no change of attitude on the part of the people of Maine. The same regard for the honor of the state, for the integrity of its territory, for their own character

¹*Messages and Papers of the Presidents*, III, 530.

²April 9, 1840.

³John Quincy Adams retired from the presidency of the United States March 4, 1829. In 1830, he was elected a member of the national House of Representatives from Massachusetts and took his seat in December, 1831. This seat he continued to hold seventeen years. February 21, 1848, while engaged in the duties of a representative at the capitol, he was stricken with paralysis and died on February 25th.

as American citizens, prompting them to resist the invasion of their soil, still existed. They had the same distinguished gentleman at the head of their government; and the people of the country might be assured that Governor Fairfield never would permit the state over which he presided to be disgraced by foreign encroachments. He had, also, the fullest assurance that the rights of Maine were duly regarded by the president and the general government.¹

Five days after this discussion in the House of Representatives, the senate committee on foreign affairs presented a report, placing clearly and distinctly before that body the existing state of the pending negotiations between the two governments with reference to the boundary troubles. The president in his annual message had informed Congress that "for the settlement of our northeast boundary, the proposition promised by Great Britain for a commission had been received, and a counter-project, including also a provision for the certain and final adjustment of the limits in dispute, is now before the British government for its consideration." This counter-project the president had not thought it advisable to communicate to Congress. The committee, however, had his assurance that it was of such a character as would, should it be accepted, finally settle the question. This proposition was officially communicated to the British government. As late as March 13, 1840, the British minister had informed the secretary of state that her Majesty's government was only waiting for the detailed report of the British commissioners recently employed to survey the disputed territory, in order to transmit to the government of the United States a reply to its last proposal upon the subject of the boundary negotiation. The committee, therefore, could perceive no adequate cause at present for anticipating hostilities between the two countries. They would not be understood, however, as expressing the opinion that the country should not be prepared for any emergency. The question of peace or

¹*Congressional Globe*, 26th Congress, First Session, VIII, 311, 312.

war would in a great degree depend upon the answer of the British government, which was expected at an early day.¹

The confidence of the senate committee seems to have had a reasonable basis; for, on June 22, 1840, the British minister in Washington announced the consent of the British government to the principles of the last proposition of the United States for the settlement of the boundary. The British draft of the previous year, having reference to a final settlement, contained no provision embodying the principle of arbitration. The American counter-draft contained such a provision. Accordingly, Mr. Fox said he was instructed to state officially that Great Britain consented to the two principles which form the main foundation of the American counter-draft; first, that the commission to be appointed shall be so constituted as necessarily to lead to a final settlement of the boundary question, and, secondly, that in order to secure such a result the convention, by which the commission is to be created, shall contain a provision for arbitration upon points to which the British and American commissioners may not be able to agree.²

At the same time, Mr. Fox sent to Mr. Forsyth printed copies of the report and map prepared by the two British commissioners, Colonel Mudge and Mr. Featherstonhaugh, who had made an *ex parte* survey in 1839. This act was designated by the British minister "as a mark of courtesy and consideration toward the government of the United States," in that "documents of so much interest and importance" should first be communicated to the president. It should be said, however, that the documents were not found to have the interest and importance attributed to them by the British minister and the British government. "A most extraordinary report it was," said Mr. Webster afterward in a speech in the Senate of the United States. "These gentlemen [Messrs. Mudge and Featherstonhaugh] had discovered that

¹*Senate Document No. 382, 26th Congress, First Session, VI, 1, 2.*

²*Messages and Papers of the Presidents, III, 595, 596.* Referring to this communication, Mr. Webster, somewhat sarcastically, said, "The industrious diplomats resumed their severe and vigorous labors."

up to that time nobody had been right. They invented a new line of highlands, cutting across the waters of the Aroostook and other streams emptying into the St. John, which, in every previous examination and exploration, had escaped all mortal eyes."¹

Mr. Forsyth, June 26th, in a note to the British minister, expressed the president's appreciation of the motives and courtesy that prompted the British government to send the documents that accompanied Mr. Fox's letter, and his pleasure at the prospect of an early possession of the draft of a proposition with reference to a final settlement of the boundary differences.²

It was soon understood why the British government attached so much importance to the report made by Colonel Mudge and Mr. Featherstonhaugh. Its writers supported the British claim. On July 20th, an appendix to the report reached Mr. Forsyth.³ For some days, those in Congress who were most interested in boundary matters had been busy with the endeavor to send to the disputed territory a United States commission for the purpose of exploration and survey, having in view, evidently, the work of the British surveyors just mentioned. Shortly after the middle of July, and near the close of the first session of the twenty-sixth Congress, a bill was passed authorizing the president to appoint such a commission. Although the Mudge-Featherstonhaugh report had not been accepted by the British government, it was regarded as highly important that an added survey, by American officials, should also be made.⁴ July 25th, Mr. Forsyth informed Mr. Fox that the president, in accordance with this action of Congress, had appointed Mr. James Renwick, Mr. Parker Cleveland and Captain Andrew Talcott, as commissioners for the purpose of making a topographical survey of various parts of the disputed territory and the adjoining country, for the information and use of the United States government. The commissioners, with a

¹*The Works of Daniel Webster.* Boston, Little & Brown, 1851, V, 91, 92.

²*Messages and Papers of the Presidents*, III, 597.

³*Senate Document, No. 274, 29th Congress, First Session, 2.*

⁴*Congressional Globe*, 26th Congress, First Session, July 8, 1840, 514.

proper number of assistants, were to meet in Portland early in August, and thence, separated into field parties, they were to proceed to the scene of the surveys for the performance of the duties to which they had been assigned.¹

Evidently this action of the United States Senate with reference to an added survey had been anticipated by the British government; for three days later, July 28, 1840,² Mr. Fox laid before the secretary of state the draft of a convention between the two governments for the appointment of two commissions; one to explore and survey the boundary line between the United States and the British provinces of New Brunswick and Canada,³ and to determine and lay down the boundary in conformity with the treaty of 1783; the other to arbitrate on those matters with respect to which the first commission might be unable to come to a decision.

Several minor points of detail were mentioned by Mr. Fox, in which the British draft now offered differed from the counter-draft proposed by the United States in the preceding year. Three passages in that counter-draft are noticed, which the British government regarded as altogether inadmissible. The first was in that part of the preamble in which the contracting parties were made jointly to affirm that the line of boundary claimed by the United States corresponds with the words of the treaty of 1783, and that the line claimed by Great Britain does not; the words being these: "the United States claiming, as the position of the northwest angle of Nova Scotia, a point due north of the river St. Croix on the highlands lying north of the river St. John, and which divide those rivers that empty themselves into the river

¹*Senate Document No. 274, 29th Congress, First Session, V, 2, 3.*

²On the same date, Mr. Fox informed Mr. Forsyth of the arrival at Halifax from England of Lieutenant Broughton and Mr. James Featherstonhaugh, for the purpose of completing the survey and exploration made in the preceding year by Colonel Mudge and Mr. G. W. Featherstonhaugh.

³By an act of the British Parliament, July 23, 1840, the provinces of Upper and Lower Canada were united so as to form one province for the purpose of executive government and legislation, and for the government of Canada. *British and Foreign State Papers, 1840, 41, 42.*

St. Lawrence from those which fall into the Atlantic ocean; and Great Britain claiming, as the position of said northwest angle of Nova Scotia, a point on a highland called Mars Hill, lying south of the river St. John, and dividing those waters which empty themselves into the river St. John from those which fall into the Atlantic Ocean.''

Such a statement of the British claim at once revealed the difficulty the British found in making it harmonize at all with the description of the boundary as given in the treaty of 1783, and the effect it would have, if it was allowed to stand, was easily discoverable. The second passage occurred in a statement in the tenth article of the American draft of 1839, in which it was proposed that Mitchell's map should be acknowledged as a document bearing upon the question of boundary. It had grossest errors, it was said, and was not referred to in the treaty of 1783. The third passage to which objection was made was in the fourteenth article, where it was implied, it was said, that agents of the two governments should accompany the commissioners for the purpose of giving explanations on behalf of the respective parties. No such agents were necessary, and Great Britain could not consent to such an arrangement. The draft of convention now offered by Great Britain provided that the commission should meet at Quebec, and that it should commence its labors of exploration at the head of the Connecticut river.¹

On August 13th, in replying to Mr. Fox's communication of July 28th, Mr. Forsyth submitted a draft, very largely in the same language as that presented by the British government. In both documents the words of the preamble were identical. With regard to the first of the three passages in the American counter-project of the preceding year, to which Great Britain made objection, Mr. Forsyth only remarked that it was intended merely as a statement of what was in fact understood to be the claims of

¹*Senate Document No. 274, 29th Congress, First Session, V, 3-12.* The British draft of convention, inclosed in Mr. Fox's letter, is printed in full in connection with the letter.

the respective parties; but the United States had no objection to the substitution of a general description of the line as proposed in the British draft. As to the second passage, relating to Mitchell's map, it was not perceived how its value could be denied either upon diplomatic or scientific grounds, or how there could be any denial as to its bearing upon the question to be decided; and under this view of the matter the president presumed that the British government would allow the article to stand. With respect to the third passage to which objection was made the president acquiesced in its omission.

With reference to the meeting place of the commission of survey, the president saw no particular benefit from the proposed change to Quebec, the proposition in the American counter-project that the meeting should be in Boston having been copied from the first British draft. A few other minor changes were made and two additional articles were inserted, with the view of ascertaining the possibility of terminating in the shortest possible time a long protracted and vexatious dispute. In both of these articles, the interests of the State of Maine in the settlement of the boundary controversy were recognized. The two articles were as follows:

“ARTICLE XVI.

“It being possible, and, if so, highly desirable, that a conventional line may be agreed upon which will be satisfactory to all the parties in interest, and the necessity of a final umpirage of their conflicting claims be thereby superseded, it is with that view agreed by the immediate parties to this convention, that it shall be at the option of the State of Maine to appoint, in such manner as her Legislature shall direct, two commissioners, who shall be associated with the board of commissioners of exploration hereby established, for the purpose of making, receiving, discussing and settling, in conjunction with the said board, propositions for the establishment of a conventional line upon the territory in dispute between the United States and her Majesty's colonies, but for no other purpose.

“ARTICLE XVII.

“It is further provided, that if the commissioners appointed under this convention shall be able, in conjunction with those appointed by the State of Maine, to agree on a line upon the territory hereinbefore described which shall be satisfactory to the governments of the United States and Great Brit-

ain, and also to the State of Maine, and her assent to the same be given in such manner as her Legislature shall direct, at any time before a final decision is made in the matter by the umpires hereby created, that then, and in such case, the governments of the United States and her Britannic Majesty will carry such agreement into full effect, and solemnly and finally ratify the same."¹

Mr. Fox, August 17, 1840, informing Mr. Forsyth of his reception of the latter's letter of the 13th, and of the new convention draft proposed by the government of the United States, expressed regret at the modifications and changes introduced; and while he had lost no time in forwarding the documents to his home government, it was not with the expectation that the terms of the convention now offered would meet with the approval of that government. However, it was satisfactory to find that the points of difference between the two drafts had been brought within a narrower compass than hitherto, and relate chiefly to details and not to principles.²

In this counter-project much had been conceded to Great Britain by the United States in abandoning the strong position that the line described in the treaty of 1783 could and should be determined as the boundary, and in admitting the possibility and consequent desirability of agreeing upon a conventional line for the purpose of reaching a speedy and final settlement of the boundary controversy. But, notwithstanding this concession, the fact remained that the consent of Maine was made necessary to any such settlement; and the British minister, from this point of view, might well regard the outlook for the British acceptance of the counter-project as exceedingly unfavorable. Maine had manifested no disposition to accept a conventional line.

In another letter, June 22, 1840, Mr. Fox invited the attention of the United States government to the expediency of providing against the danger of local collisions in the disputed territory

¹For Mr. Forsyth's letter of August 13, 1840, and the American convention draft in full, see *Senate Document No. 274*, 29th Congress, First Session, V, 13-20.

²*Ib.*, 24th Congress, First Session, V, 20, 21.

during the pending negotiations; and he inclosed a memorandum suggesting that each party should be placed as nearly as was possible in the situation in which it stood, when the agreement between Governor Fairfield and Sir John Harvey was made in the spring of 1839, "care being taken, however, to supply the deficiency which has been found to exist in that agreement with respect to their existing limits of possession and jurisdiction, and also to obtain the guaranty of the general government for the due execution of the conditions. The limits and terms of possession and jurisdiction were understood by the British authorities to be, 'that the civil *posse* of Maine should retain possession of the valley of the Aroostook, the British denying their right; the British authorities retaining possession of the valley of the upper St. John, Maine denying their right.'" This would require first that the State of Maine should withdraw from the post occupied by it on the Fish River; second, that all movements, beyond these limits, of armed forces on either side, whether of regulars, militia, or armed *posse*, should cease, as well as the erection of strong buildings and the cutting of roads; and third that commissioners should be named by the two governments, to see that these conditions were duly carried into effect.¹

Reference should be made here to the report of the commissioners appointed by the president to explore and survey the disputed territory in accordance with the action of Congress in July, 1840. There was a change in the membership of the commission as announced by the secretary of state, two appointments having been declined; and the party, as finally made up, consisted of James Renwick, James D. Graham and Andrew Talcott. The commissioners assembled in Portland, and left there in detachments on August 26th and 27th. Some time was required for securing assistants, guides and provisions at Augusta and Bangor; but knowing the importance of haste in order to reach the field of their operations at an early day, the parties pressed forward with all possible dispatch. The boats and all the stores were at Woodstock

¹*Senate Document No. 274, 24th Congress, First Session, V, 21, 22.*

on September 3rd, and at Grand Falls on the 8th. Here, there was a further division of the company into four detachments, the first to proceed down the Restigouche to the tide of the Bay of Chaleurs; the second to ascend the Grande Fourche of the Restigouche to its source; the third to make its way to a station on Green River; the fourth to convey the surplus stores and heavy baggage to Lake Temiscouata, and thence to ascend the Tuladi and Abaquoquash to the highest accessible point. The general rendezvous was fixed at Lake Temiscouata. The several detachments pressed forward energetically, but the line to be explored was not reached until September 22nd, and the season then was too far advanced for effective work. Not only were the rivers at their lowest depth, but ice commenced to form as early as the 12th of September and snow fell on the 21st and 22nd of September. In their approach to the disputed territory, the members of the party were the recipients of cordial greetings from the colonial officials, a proclamation of Sir John Harvey and the British warden, Colonel MacLauchlan, contributing greatly to the comfort of the commissioners and their assistants.

January 6, 1841, the commission submitted its report¹ to the secretary of state in Washington. It added little, if anything, to what had already been ascertained by earlier explorers and surveyors. Deep falls of snow in October were followed by deeper falls in November, and the shortening days of those months in the wilderness, traversed under these circumstances, made progress difficult. The principal gain obtained in this exploration and survey was the confirmation, by men of experience and ability, of the results obtained by their predecessors.²

¹In the *Messages and Papers of the Presidents*, III, 629-639, the report of the commissioners is printed in full.

²In the season of 1841, the commissioners continued their work. An additional report was presented January 4, 1842. *Messages and Papers of the Presidents*, IV, 92-97.

CHAPTER XVI.

BOTH SIDES MARKING TIME.

THUS matters stood at the close of 1840. In his message to Congress, December 5th, President Van Buren thus described existing conditions with reference to boundary concerns at that time: "The excitement which grew out of the territorial controversy between the United States and Great Britain having in a great measure subsided, it is hoped that a favorable period is approaching for its final settlement. Both governments must now be convinced of the dangers with which the question is fraught, and it must be their desire, as it is their interest, that this perpetual cause of irritation should be removed as soon as practicable. In my last annual message you were informed that the proposition for a commission of exploration and survey, promised by Great Britain, had been received; and that a counter-project, including also a provision for the certain and final adjustment of the limits in dispute was then before the British government for its consideration. The answer of that government, accompanied by additional propositions of its own, was received through its minister here since your separation. These were promptly considered; such as were deemed correct in principle and consistent with a due regard to the just rights of the United States and of the State of Maine concurred in; and the reasons for dissenting from the residue, with an additional suggestion on our part, communicated by the secretary of state to Mr. Fox. That minister, not feeling himself sufficiently instructed upon some of the points raised in the discussion, felt it to be his duty to refer the matter to his own government for its further decision."¹

¹*Messages and Papers of the Presidents*, III, 603, 604.

In a later period of the controversy, with considerable contempt for such international shortcomings, Mr. Webster remarked: "A very promising condition of things to exist fifty-seven years after the conclusion of the treaty!" Evidently there was need of some such expression of strong, dissatisfied feeling. Even the points most recently raised in connection with the projects and counter-projects of the preceding chapter had now been under consideration for some time; yet the president had no other word as to the outlook for the country than an expression of hope as to a "prompt and satisfactory termination of the negotiation." The fact was, however, that the American proposals were received in England as Mr. Fox had foreseen. Lord Palmerston would not notice them in any way, and gave up the negotiation in apparent despair. There was no hope of doing anything with the Van Buren government, he said. Until another administration should come into power, nothing could be accomplished. That day, however, was not far away, General Harrison having already been elected president of the United States. But Lord Palmerston, as well as President Van Buren, was about to retire from office, yet only four days before the British premier's retirement, he presented new proposals to the government of the United States. Sir Robert Peel, in the House of Commons, referring to these proposals, said they were to this effect: that commissioners should be nominated on both sides; that they should attempt to settle this long disputed question; and then, if that attempt should fail, the king of Prussia, the king of Sweden and the king of Saxony were to be called in, not to act as umpires, but each to name an expert in science, the three to form a commission of scientists for action as arbitrators. "Was there ever a proposition like this," asked Sir Robert, "for the arrangement of a question on which two countries had differed for fifty-eight years?" And this, he said, was proposed after the failure of the king of Holland as an arbitrator, and after the failure of their commission of exploration. The three kings were to appoint three scientists, foreign professors, one from Prussia, one from Sardinia and one from Saxony!

To do what? Where were they to meet? How were they to come to a satisfactory agreement? Any such proposal, Sir Robert considered unworthy of consideration.

Mr. Webster, also, had his amusement over Lord Palmerston's proposal. "It was asked in the House of Commons, not inaptly," he said, "What would the people of Maine think, when they should read that they were to be visited by three learned foreigners, one from Prussia, one from Saxony and one from Sardinia? To be sure, what would they think, when they should see three learned foreign professors, each speaking a different language, and none of them the English or American tongue, among the swamps and morasses of Maine in summer, or wading through the snows of winter—on the Allegash, the Magaguadavic, or among the moose and deer, on the precipitous and lofty shores of Pohenagamook,—and for what? To find where the division was between Maine and New Brunswick, instructing themselves by these labors, that they might repair to Frankfort-on-the-Main, and there hold solemn and scientific arbitration on the question of a boundary line in one of the deepest wildernesses of North America!"¹

Edward Kent again became governor of Maine at the opening of 1841.² In his reference to boundary matters in his annual message to the Legislature, he was not as hopeful of a speedy and satisfactory settlement as was President Van Buren. He said: "The arrangement assented to on the part of Maine in 1839, by which, on condition that Maine should remain in undisputed possession of part of the territory, it was stipulated that we should not 'attempt to disturb by arms the Province of New Brunswick in the possession of the Madawaska settlements,' was acquiesced in by the people only on the ground and the belief that immediate and determined efforts were to be, in good faith, adopted by both general governments, to bring the matter to a speedy, just and final determination. Indulging such hopes, Maine has certainly

¹*The Works of Daniel Webster.* Boston, Little & Brown, V, 95, 96.

²The vote was a very close one. Edward Kent, Whig, received 45,574 votes, and John Fairfield, Democrat, 45,507.

yielded much in the matter of temporary arrangements influenced by the wish to preserve the peace of the country and to remove all obstacles to the progress of negotiation. But she has a right to ask, when she yields so much, that her motives should be appreciated and her cause become the cause of the whole country and pressed with vigor and energy to a final settlement. In the meantime it is our duty to keep our eyes and our thoughts upon the starting point of the treaty—the northwest angle of Nova Scotia and the highlands from thence so plainly specified in the treaty, and not suffer ourselves to be drawn away into discussions, whether the monument at the source of the St. Croix, which was located by both governments more than forty years since and is fully established, is at the true point; or whether it is not possible that antediluvian mountains existed, which, by some geological process have become abraded and worn down, and have now become the beds of large rivers. The face of the earth, as it existed in the year of our Lord one thousand seven hundred and eighty-three, is to determine the location of the highlands of the treaty; and the mere speculations of self-styled geologists concerning imaginary or theoretical highlands, which probably never had existed except in the fancies of speculative theorists, cannot fairly and legitimately have the slightest influence upon the pending question. more especially when, if it could be demonstrated that the assumed line now exists, it would not answer any of the requirements of the treaty."

In these words addressed to the Legislature, there was certainly no indication that Maine was prepared to withdraw from the position she had hitherto found a veritable stronghold, namely, the boundary description in the treaty of 1783. Nor was it easy for Governor Kent to indulge the hope of a speedy and satisfactory settlement of the differences between the United States and Great Britain, as expressed by the president in his message. Past delays and lessons of experience learned in connection with the assertion of the growing claims of Great Britain, and which had become increasingly irritating, could have no other effect than to moderate

such hopes very considerably. But, as the governor knew, the president was in a position from which he had an opportunity for obtaining larger information, and he added: "If, however, the president has cause to say that there is an undoubted disposition of both parties, to bring the matter to an early conclusion, we may, without the charge of being too sanguine in our anticipations, confidently trust that a fair, equal and honorable proposition for a commission, with final power to end the dispute, will be readily and fully assented to by the English government, unless there is a fixed determination on its part to bring the matter to the last resort of nations. The time cannot be far distant, when the question must assume a more definite shape, either peaceable or warlike; and much as we may deprecate the awful evils and miseries of war, we ought to be prepared to meet the issue (if such, after all, is the determination of our opponents) with the firmness of men, who feel that they have the right, and who will not yield, to threats or force, the inheritance of our fathers and the rightful territory of our State."¹

So much of Governor Kent's message as referred to the boundary controversy, also the message of the late governor communicating his recent correspondence with the lieutenant governor of New Brunswick and the president of the United States, together with the resolution of the Legislatures of Indiana, Alabama and Maryland, relating to the boundary controversy, were referred by the Legislature of Maine to a joint select committee, which on March 30th presented an extended report, prepared by its chairman, Mr. Charles S. Daveis, of Portland. Mr. Daveis had been familiar with the progress of the controversy from the time when Maine assumed her place in the Federal Union, and had made a very careful study of the history of the controversy from the beginning. His report was largely a vindication of the justice of Maine's contention, having regard both to rights and principles, also to the course which the state authorities had pursued and the position which they still maintained, solicitous only that Maine

¹*Resolves of Maine*, IV, 667, 668.

should enjoy the territorial advantages which the laws of nature and of nations had secured to her.

But what of the future? it was asked. Two orders, one from the House of Representatives and one from the Senate, had been referred to the committee. One suggested that the executive authority of the state should be employed to expel the increased British force quartered upon Maine territory. The other proposed that the state should invoke attention to the constitutional obligation of the general government, and call upon the president of the United States for the prompt fulfillment of this obligation. In the opinion of the committee, the state "would be untrue to itself, insensible to its own character, interest and honor," if it should "renounce or repudiate the position in which it was involuntarily placed," under the necessity and duty of self-protection imposed upon it by foreign aggression. "It would be forgetful of the illustrious examples of virtue and patriotism, which were ever before the eyes of our cherished and lamented Lincoln,¹ to disclaim the ground, or abandon the stand, which he so firmly and intrepidly took upon this question." Because of existing circumstances, therefore, and as the case now stood, the committee deemed it wise "to continue to call upon the general government to vindicate and maintain the rights of the State of Maine to its indisputable and indefeasible territory." In fact, it would be ungrateful in the state, now that her cause had been made that of the nation, to pursue any other course at present. "As we value and cherish the pledge it has given us," added the committee, "our anxiety should be to avoid anything by which we should forfeit 'our title to its protection.'"²

But in the meantime what was to be the state of the disputed territory, and especially of that portion lying north of the St. John River? In answering this question, the committee could not see how the Legislature could take any other attitude than in the resolves of the Legislature of 1839, namely, for Maine (in the

¹ Knoch Lincoln, governor of Maine, 1827-1829.

² *Resolves of Maine*, IV, 633, 634.

same earnest desire to come to an amicable adjustment of existing differences between the United States and Great Britain) to forbear to enforce her jurisdiction in the disputed territory, so far as she could do so consistently with the maintenance of her previous resolves for the protection of the whole territory against trespass and devastation. But the space should not be widened, so as to extend to the Fish River, or upon the south bank of the St. John above the western bend. Further, Maine could not consent to any change in the character of that possession, as from civil to military, or to a change made to assume a permanent form. Her people would not consent to it, though they were willing to pay any reasonable price for their own peace and for the peace of the country. But the price must not be too great; and the report closed with the stirring words, evidently expressive of the spirit not only of the members of the Legislature, but of their constituents as well: "Maine feels herself, unavoidably, to be the forlorn hope of the Union. As such she is ready to go forward and to pursue the path that lies before her. As such she is prepared to occupy the pass to which she may be directed, to present her breast as a bulwark for the country—and of those of her brave and beloved sons, the self-devoted band that shall be sent upon this service, to leave the writing upon the soil, in the best blood of the state, to tell the country, and be carried back to the capital, that *they lie there in obedience to its laws.*"¹

The committee appended to their report some resolves, which were adopted by the Legislature. In them, the right of the state to the whole of the disputed territory, according to the treaty of 1783 and according to the unanimous resolutions of the Congress of the United States in 1838, was reaffirmed. The earnest expectation of the Legislature also was expressed that the national government would not fail speedily to vindicate that right and other rights either by negotiation or by arms; and to this end all the powers and resources of the state were tendered to the authorities in Washington, the state, through its legislators, declaring its

¹*Resolves of Maine*, IV, 637.

readiness to obey the will and call of the country to occupy any assigned place marked out for it. "This state," the resolves continued, "is suffering the extreme unresisted wrong of British invasion, begun in 1839, repeated in 1840, and continued to this time, in violation of solemn and deliberate pledges from abroad, guaranteed by our own executive government;" and the president, the report continued, was "requested and called upon to fulfill the obligation of the federal constitution by causing the immediate removal or expulsion of the foreign invading force, now stationed within the bounds of Maine; and, other methods failing, to cause military possession to be taken of the disputed territory." Nor was this all. The government of the United States was urged to provide for the future protection of the state against foreign aggression by the establishment upon the frontier of an adequate military force, thus relieving the state from its present heavy burden in maintaining proper defence. There was also need that there should be an early completion of the work of the commission appointed to explore and trace the boundary line from the northwest angle of Nova Scotia along the highlands according to the treaty of 1783.¹

William H. Harrison, who succeeded Martin Van Buren as president of the United States, was inaugurated March 4, 1841. In his inaugural address he naturally made only general references to the country's foreign relations; but he let it be known distinctly to the people of other countries, as well as to the people of the United States, that if the interests of the country should be threatened by any foreign "claim or pretension," nothing should fail to receive attention and support, which our honor would not permit us to yield. "Long the defender of my country's rights in the field," said the president, "I trust that my fellow citizens will not see in my earnest desire to preserve peace with foreign powers any indication that their rights will ever be sacrificed, or the honor of the nation tarnished, by any admission on the part of their chief magistrate unworthy of their former

¹ *Resolves of Maine*, IV, 637-639.

glory."¹ With such purposes in view President Harrison placed the foreign relations of the country in the care of Daniel Webster as secretary of state for the United States. Mr. Webster's recent words of criticism in the Senate as to past failures in boundary negotiations were rightly regarded as foreshadowing his own purposes, and awakened strong hopes with reference to boundary negotiations in the immediate future.

On Sunday morning, April 4th, and therefore only a month after his induction into office, President Harrison died. "In death, as in life," wrote Mr. Webster in announcing the president's death, "the happiness of the country was uppermost in his thoughts."²

¹*Messages and Papers of the Presidents*, IV, 19.

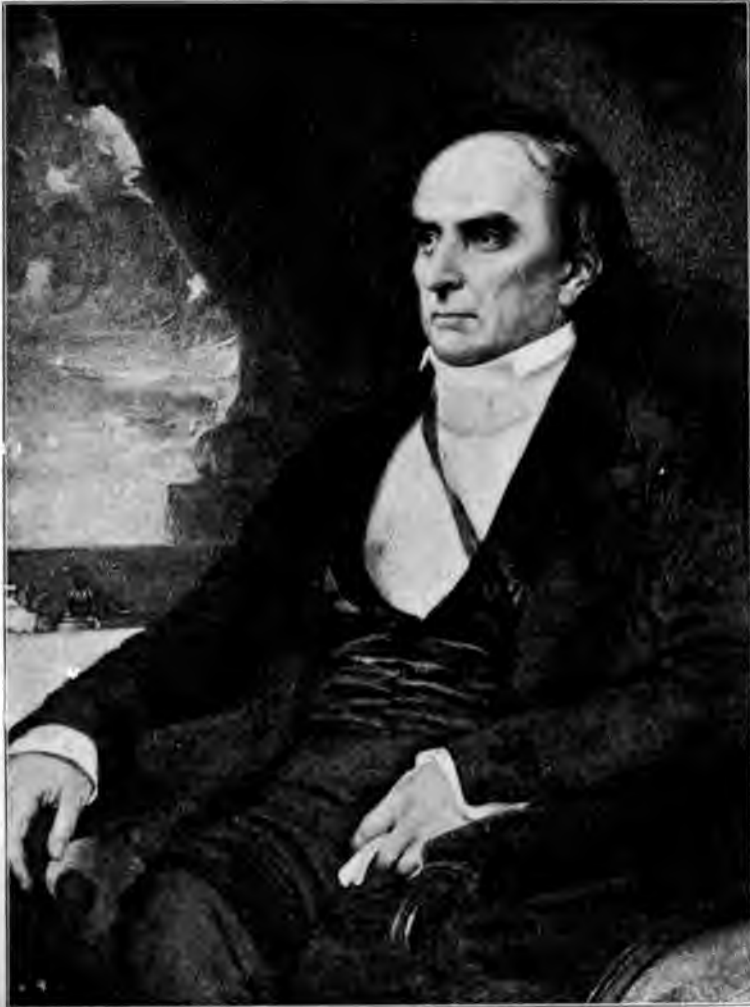
²*Ib.*, IV, 22.

CHAPTER XVII.

WEBSTER'S PROPOSAL ACCEPTED.

FOR nearly half a century matters relating to the north-eastern boundary had been under consideration by the government of the United States. But the controversy continued; and there was now a strong and increasingly imperative demand for its speedy settlement. President Harrison was entirely in sympathy with this demand. President Tyler, suddenly coming into President Harrison's place, retained Mr. Webster at the head of the state department, recognizing Mr. Webster's eminent fitness for such a service. For some time the distinguished Massachusetts senator had been convinced that no settlement of the boundary controversy could be secured in any other way than by compromise. Early in 1839, having heard that President Van Buren had expressed an opinion favorable to sending him to England on a special mission with reference to a settlement of the controversy, Mr. Webster prepared a memorandum stating his opinion as to the course such a minister ought to pursue. Great Britain, he thought, would not gratuitously yield her pretensions. Accordingly something must be yielded by the United States, and he regarded a conventional line as promising the largest hope of success. Before leaving the country, he said, such a minister should have an interview with the governor of Maine and her delegation in Congress. They should examine the map carefully and especially they should be called on to say *what* conventional line Maine would approve. If a conventional line should be agreed upon in London, it should be one of the conditions of the convention that the president's ratification should be postponed until Maine had given her consent.¹

¹*The Letters of Daniel Webster.* Van Tyne, 1902, 217.



DANIEL WEBSTER.

From portrait in the State Department at Washington.

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Early after Mr. Webster's appointment as secretary of state, Mr. Fox, who was still the British minister in Washington, was instructed by Lord Palmerston to renew his efforts to have the boundary controversy settled by arbitration. Writing to Mr. Fox, he said, "Let us consider the American *contre projet* as unreasonable, undeserving an answer, as withdrawn from consideration, and now submit my original *projet* to Mr. Webster, the new secretary of state, and persuade him it is reasonable."

Although Mr. Webster was not to be so easily persuaded as Lord Palmerston desired, he did hope to see the boundary question settled during his connection with the state department. But it must be rescued from the labyrinth of projects and counter-projects in which it had become involved. "I found the parties in wandering mazes lost," he said later.¹ "I found it quite as tedious and difficult to trace the thread of this intricate negotiation, as it would be to run out the line of the highlands itself. One was quite as full as the other of deviations, abruptnesses and perplexities. And having received the president's authority, I did say to Mr. Fox, as has been stated in the British Parliament, that I was willing to attempt to settle the dispute by agreeing on a conventional line, or line by compromise."²

But a conventional line was not what Maine wanted. Again and again, with emphatic reiteration, she had insisted on the line described in the treaty of 1783; and Mr. Webster was very well aware of the difficulties of the task to which he had devoted himself. He knew it was a serious matter to ask Maine to come into an agreement by which she might and was likely to subject herself to the loss of territory which she regarded as clearly her own by treaty rights. "The question touched her propriety interests, and, what was more delicate, it touched the extent of her jurisdiction. I knew well her extreme jealousy and high feeling on this point. But I believed in her patriotism, and in her willing-

¹This was in the summer of 1841. *The Works of Daniel Webster*. Boston, Little & Brown, 1851, VI, 270.

²*Ib.*, Boston, Little & Brown, 1851, V, 97, VI, 270.

ness to make sacrifices for the good of the country." Accordingly, very early, Mr. Webster began to consider means for giving influential people in Maine information concerning his plans and purposes with reference to a settlement of the boundary controversy on the basis of a compromise, which should include not only an exchange of territory but a pecuniary indemnity.

With the fall of the Melbourne ministry, Lord Palmerston retired from office as foreign secretary, and Lord Aberdeen had now taken his place, with Sir Robert Peel as prime minister. At this time, also, Edward Everett was the American minister in London, possessing, as may well be believed, the fullest information with reference to Mr. Webster's purposes as to the manner in which boundary matters were to be taken up with the new British ministry. Both parties, therefore, entered into negotiations with reference to the desired settlement under the most favorable auspices; and before the end of 1841, Lord Aberdeen informed Mr. Everett that his government had decided to send Lord Ashburton to the United States as a special minister, with full powers to settle the boundary controversy and any other matters concerning which differences existed that required adjustment.

December 15, 1841, therefore about the same time as the Ashburton appointment was announced, Governor Kent wrote to Mr. Webster seeking information with reference to boundary matters. In his reply Mr. Webster said there had been hardly any positive progress during the year. In fact, he went back farther. "Mr. Forsyth's counter-project, delivered in August, 1840," he wrote, "received no answer until just before Lord Palmerston went out of office in August, 1841. It was then answered, and this answer has revived the subject; and other correspondence will ere long take place between the parties. The interest of both parties undoubtedly requires a compromise, and I have no doubt that the position which Maine has assumed is the only obstacle to bringing such a compromise about. The English government cannot treat with us about a compromise, unless we say we have authority to consummate what we agree to; and although I entertain not the

slightest doubt of the just authority of this government to settle this question by compromise, as well as in any other way, yet in the present condition of affairs, I suppose it will not be prudent to stir in the direction of compromise without the consent of the State of Maine. . . . Suppose England should be willing to *pay* for the land north of the river [St. John], and leave the question of its navigation to be settled hereafter; or suppose she should be willing to let our line run from the monument to the mouth of Eel river, and then up the St. John and so through the lakes? I should be very glad of your thought on these and all other points; but incline for the present to think, with you, that perhaps the easiest mode of getting the parties together for a compromise may be the creation of a commission. I hope this may be done this session of Congress."¹

But Mr. Webster's purposes included something more than Maine's acceptance of a boundary settlement on the basis of a conventional line. As a matter of prime importance preceding the conferences that would follow the arrival of Lord Ashburton in Washington, he saw the necessity of obtaining first of all the definite consent of Maine to his plans and purposes. With this end in view he sought first of all the assistance of Francis O. J. Smith, of Portland, a former member of Congress from Maine, who, with several assistants, interviewed "leading and influential gentlemen of both political parties" in five of the principal counties in Maine.² Also, early in 1842, he had an interview with the two senators from Maine, Reuel Williams and George Evans, to whom he freely disclosed his matured views. Later, at the White House with the president, he had a second interview with Mr. Williams. Subsequently Mr. Williams returned to Maine, probably with reference to boundary matters principally; and to him, February 2, 1842, Mr. Webster addressed a letter for use in his conferences there. In the letter he referred to Lord Ashbur-

¹*The Letters of Daniel Webster.* Van Tyne, 1902, 248, 249.

²Letter in the library of the Maine Historical Society, Box IV, *Northeastern Boundary Pamphlets.*

ton's mission to this country. It was highly probable, Mr. Webster said, that Lord Ashburton would come prepared to agree to a conventional line of boundary on such terms and conditions, and with such compensations, as would be deemed just and equitable. The president, therefore, desired that the attention of the government of Maine should early be turned to this method of settlement, considering whether it would not be desirable to make Maine a party to the discussions and conclusions connected with the negotiations. A treaty for a conventional line, of course, was a matter between the United States and Great Britain; but during the negotiations, agents, or commissioners of Maine, might represent her interests and wishes, with the understanding that no exchange of territory, or other proceedings to make a new line by agreement, would be adopted without their express assent. The presence of such commissioners in the conferences, he said, would be helpful "as they would be possessed of the fullest local information, and well acquainted with the interests, sentiments and wishes of the people of Maine." Any arrangement, therefore, "entered into with their consent, if happily such an arrangement could be made, would be likely to give satisfaction."¹

Mr. Williams, accordingly, was asked to confer with Governor Fairfield (who had now succeeded Governor Kent) and others whose opinions he might wish to obtain. In fact, he said, with the president's approval he had concluded to write to some gentleman of high character in Maine, such as Chief Justice Weston, inviting him to come to Washington and confer with the president and the state department. If Judge Weston's engagements would not allow him to come, any other gentleman, whom the governor and Mr. Williams might select, would be agreeable. "It is our purpose," added Mr. Webster, "to put the questions in the fairest manner to Maine, whether she will consent to be satisfied with a conventional line and all the other terms and

¹Mr. F. O. J. Smith was in Washington at this time. See letter from him to Hon. J. Smith, of the Maine Senate, library of Maine Historical Society, Box IV, *Northeastern Boundary Pamphlets*.

conditions, which commissioners of her own appointment shall have approved. . . . No negotiations for such a line will be opened, or entered upon, without an express previous consent on the part of Maine to acquiesce in any line, with all its terms, conditions and compensations, which shall have been thus previously approved."¹

To such a proposal Mr. Webster must have considered a favorable response as exceedingly doubtful, and especially because of the requirement that Maine, in advance of any action by the negotiators, should agree to acquiesce in such measures and terms as should receive the approval of her commissioners. The proposal, however, could hardly have been made at a better opportunity for Mr. Webster's success in his undertaking. It was a time of great discouragement in Maine with reference to boundary concerns. In his annual message to the Legislature, January 7, 1842, Governor Fairfield said that with pain and mortification he found the boundary question unsettled.² The mission of Mr. Smith, as the representative of the secretary of state, afforded no other hope of settlement than that proposed by Mr. Webster. On February 21, 1842, Mr. Williams replied to Mr. Webster's letter of the 2nd. He was fearful that an objection from the point of honor and consistency on the part of the Legislature might stand in the way of arriving at what would be satisfactory to both countries; but on the whole the letter brought encouragement to Mr. Webster.

The latter, in his reply to Mr. Williams, expressed regret that Governor Fairfield and his friends should be of the opinion that such points as he had mentioned should stand in the way of reaching a settlement satisfactory on both sides of the sea. But if Maine was confident of the justice and validity of her claims, it was equally true that England, also, evinced on her side no less confidence. "Maine thinks that England has interposed an insurmountable claim to a portion of her territory, and the government of the United States thinks Maine, in that opinion, is entirely right;

¹*The Letters of Daniel Webster.* Van Tyne, 1902, 256-258.

²*Resolves of Maine, 1842, 102.*

but England asserts, on the other side, that the United States and Maine have interposed an insurmountable claim to a portion of her territory; and these conflicting opinions and assertions of right must be, in some way, settled and adjusted. It is true that England occupies or protects a part of the disputed territory by armed force; but it is equally true that the United States occupy and protect another part by an armed force also, and this last force was placed in position at the request of the government of Maine. Indeed, if I remember correctly, Maine assented in the year 1839, that the question of possession should remain as it then stood; that is, that Great Britain should hold one part, Maine not acknowledging her right; and that Maine should hold another part, England not acknowledging her right. The spirit and general principle of this understanding between Maine and the government of New Brunswick has governed the conduct of the government of the United States in all subsequent measures respecting the possession of the disputed territory; the principal alteration, that of substituting United States troops for the *posse* of Maine, having been adopted, as I have already said, at the request of Maine. I make this remark, my dear sir, with no other view than that of expressing the hope, that on more reflection, and upon full consideration of all the circumstances, the government of Maine may not find any obstacle founded on considerations of honor or consistency from concurring, in the manner suggested in my letter, in a proceeding, having in view the establishment of a conventional line, if the British minister should in fact bring with him proper authority for such a purpose."¹

On January 17, 1842, accordingly before Mr. Webster commenced this confidential correspondence, resolutions were passed by both houses of the Maine Legislature instructing the senators from Maine in Congress to call on the president of the United States for information with reference to boundary matters, and requesting copies of the correspondence concerning such matters as had passed between the government of the United States and that of Great Britain during the preceding two years. The reso-

¹*Resolves of Maine, 1842, 260, 261.*

lutions were laid before the president on February 22nd, and on the same day the secretary of state, replying for the president, made answer that since the last communication on the subject of the boundary question no correspondence with reference to it had taken place, which, in the judgment of the president, could be made public without prejudice to the country's interest. He desired it to be understood, however, that his most earnest efforts were still continued to hasten a final settlement of the boundary question to a conclusion.¹

If the members of the Legislature failed to get the correspondence for which they asked, they did not fail to obtain the information contained in the confidential letters. On March 7th, the joint select committee of the Legislature, of which Edward Kavanagh² was chairman, referred to the above answer, also to Governor Fairfield's reference to boundary matters in his message of January 7th, together with information presented by the committee to the Legislature on January 27th concerning certain measures recently adopted by Great Britain for administering more effectually her colonial rule throughout her North American provinces; and the report closed with a reference to a public notice, coming in a form that could scarcely admit a doubt of its authenticity, that a special minister had been commissioned by Great Britain with full power to discuss and adjust all questions of controversy with the United States, including that of the boundary; and that his arrival in this country might be expected at an early day.³

The arrival of Lord Ashburton in this country was mentioned in the *Portland Advertiser* of April 8th. He came in the British frigate *Warspite*,⁴ and landed at Annapolis, Maryland, after a

¹*Resolves of Maine*, 1842, 88.

²Mr. Kavanagh, as president of the Maine Senate, became governor of Maine in 1843, when Governor Fairfield was elected a senator of the United States.

³*Resolves of Maine*, 1842, 90.

⁴The *Warspite* was commanded by Sir John Hay, a name that was to have an honorable place in American history and diplomacy at a later period.

voyage of fifty-two days. Proceeding to Washington on April 4th, he was presented to President Tyler on April 6th. Five days later, Mr. Webster wrote to Governor Fairfield, announcing Lord Ashburton's arrival and informing him that he came with full powers to negotiate and settle matters in dispute between the two countries, having authority also to treat for a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as might be thought just and equitable. Under these circumstances, said Mr. Webster, the president desires the co-operation of Maine and Massachusetts in order to terminate a controversy too long continued, and which was likely to be further protracted, unless a shorter course should be adopted. This, however, would not be attempted otherwise than in accordance with treaty stipulations, and in furtherance with what had already been done. After mentioning the causes that had operated against previous efforts for settling the boundary question, and reasserting the opinion of the government with reference to the justice and validity of the American claim, Mr. Webster presented the president's proposal, viz., "that Maine and Massachusetts should severally appoint a commissioner, or commissioners, empowered to confer with the authorities of this government upon a conventional line, or line by agreement, with its terms, conditions, considerations and equivalents, with an understanding, that no such line will be agreed upon without the assent of such commissioner." Mr. Webster also expressed regret that Lord Ashburton had not arrived in the country earlier, so that the communication from the secretary of state could have been made before the adjournment of the Maine and Massachusetts Legislatures. The proposed action, if undertaken, should be concluded before the present session of Congress should terminate; and the letter closed with these words: "These considerations, in addition to the importance of the subject, and a firm conviction in the mind of the president that the interests of both countries, as well as the interests of the two states more immediately concerned, require a prompt effort to bring this dispute to

an end, constrain him to express an earnest hope that your excellency will convene the Legislature of Maine, and submit the subject to its grave and candid deliberation."¹

This letter, of course, was not unexpected. Mr. F. O. J. Smith's activities in Maine, and Mr. Webster's correspondence with Senator Williams, had made known to Governor Fairfield, and prominent members of both political parties in Maine, the views of the government in Washington with reference to boundary matters. In fact, the *Portland Advertiser* on April 9th had inserted in its columns an item from the *Bangor Whig* calling the attention of its readers to a rumor in the region of the state capital that Governor Fairfield would probably have to convene the Legislature of the State in the summer to act upon propositions connected with the boundary and the mission of Lord Ashburton. Referring to this citation, the *Advertiser* in an editorial comment remarked: "The question of summoning our own Legislature to a special session will be addressed, if at all, entirely to the discretion of Governor Fairfield. He will be under no other obligation in the case, than in reference to any other contingency which might require the extraordinary interposition of the legislative department."²

Similar comments appeared in other papers, and it may be inferred that Mr. Webster's proposals, in one way or another, had now reached so wide a circle, and had been so favorably received, that it seemed quite probable that the people of Maine would sustain the governor and the Legislature in such action as Mr. Webster had suggested.

Governor Fairfield's proclamation, calling a special session of the Legislature on May 18, 1842, appeared on April 29th. Two days before the opening of the session Mr. Webster's letter to Governor Fairfield was printed in the *Portland Advertiser* and in other Maine papers about the same time. In a message to the Legislature on the 18th, having laid Mr. Webster's communi-

¹*Resolves of Maine, 1842, 128-130.*

²*The Portland Advertiser, April 18, 1842.*

tion before the members of both houses, Governor Fairfield said that notwithstanding the expense of the extra session at a busy season of the year, he had not thought it right to withhold from the people of Maine an opportunity, through the Legislature, to entertain and decide matters of such great importance. The question presented for consideration was not a party question, but one in which the whole state was interested—one not free from embarrassment and difficulties, yet one that should have a calm, dispassionate consideration.

It was understood, the governor said, that the British government was prepared to propose what is called "a just and equitable equivalent" for a portion of the disputed territory she had heretofore claimed as her own. This was not going as far, he stated, as some would deem the honor of the state required; though it was a far less objectionable proposal than most of those Maine had received from that quarter. If Great Britain was now prepared substantially to yield the point of title, and offer an equivalent in other territory, privileges of navigation, etc., for a portion of Maine's territory, as the governor was then prepared to believe, he did not see why the vexed question that had given the two countries so much trouble should not now be settled satisfactorily. He accordingly thought favorably of the appointment of commissioners by the Legislature, with such powers as a just view of the case would seem to require, and this he recommended.¹

Mr. Webster was well represented in Augusta at this time. Peleg Sprague of Boston, a judge of the United States District Court, and a former member of the United States Senate from Maine, was there. Alfred Smith, a former member of Congress from Maine and a man of large influence in the state, mingled freely among the members of the Legislature. Jared Sparks, afterward president of Harvard College, was also in Augusta. While pursuing historical researches in the French archives in Paris in the earlier part of that year he had found a letter from

¹*Resolves of Maine*, 1842, 124-127.

Dr. Franklin to Count de Vergennes, dated "Passay, 6 December, 1782," in which Franklin had inclosed a map on which the count had asked him to mark the boundary agreed upon by the negotiators of the recent treaty of peace between Great Britain and the United States. In his note, Franklin stated that on this map he had "marked with a strong red line" the limits of the United States as settled in the treaty. As this letter was written within six days after the preliminaries were signed, Mr. Sparks inferred that if he could find that map, he would have conclusive evidence "as to the meaning affixed by the commissioners to the language of the treaty on the subject of the boundaries." He commenced at once, therefore, a search for the map, and with the aid of the keeper he found a map of North America by D'Anville, dated 1746, on which had been drawn a strong red line, throughout the entire boundary of the United States, and answering precisely to Franklin's description. To his great surprise, the north line of the eastern boundary, after leaving the source of the St. Croix River, stopped far short even of Mars Hill, turning westward and leaving on the British side not only the St. John River, but "all the streams which flow into the St. John," making it evident that the line from the St. Croix to the Canadian highlands was "intended to exclude all the waters running into the St. John." Although there was no proof that this map was the one marked by Franklin, "yet upon any other supposition," Mr. Sparks thought, "it would be difficult to explain the circumstances of its agreeing so perfectly with his description and of its being preserved in the place where it would naturally be deposited by Count de Vergennes."¹

Although this red line map was unauthenticated, and was adverse to the claim of the United States, Mr. Sparks deemed it his duty to inform Mr. Webster of his discovery, designating it as "curious if not valuable." Mr. Webster at once recognized the usefulness of the map in his endeavor to secure the consent of the Maine Legislature to his plans for the settlement of the bound-

¹*Life and Writings of Jared Sparks*, by Herbert B. Adams, II, 395, 396.

ary controversy. In this Augusta visit, Mr. Sparks had with him his copy of the map, showed it to Governor Fairfield, and to prominent members of the Legislature. The governor's message and Mr. Webster's letter were referred to a joint committee of the Legislature, which on May 20th presented a report, accompanied by resolutions providing for the appointment of commissioners, empowered to give the assent of the State of Maine to any conventional line, provided such compensations were offered as they should deem consistent with the honor and interests of Maine. A minority report was presented by William Frye, of Bethel, who, with others, objected to the appointment of commissioners upon any conditions. In both houses, for several days, there was much earnest debate with reference to the resolutions as reported and the amendments that had been proposed. Prominent in the debate were Mr. Bion Bradbury of Calais and Israel Washburn, Jr., of Orono.

Unquestionably Mr. Washburn's speech was helpful in securing the acceptance of Mr. Webster's plan for the settlement of the boundary controversy. Many years afterwards, he gave expression to his disappointment because the result was not what he expected. Referring to that result he said: "I think there was not a member of either house who had a thought or fear that any convention would be entered into, under which, if the State surrendered land which was hers by the treaty of 1783, she would not receive territory in return, which was acknowledged to belong to New Brunswick. From the opportunity which I had of knowing the feeling and expectation of members—having myself been one of them—I believe I take no risk in saying that if it had been understood that any line would be agreed upon that should not give to Maine some portion of the acknowledged territory of New Brunswick, in exchange for what the latter should receive from Maine, the commission would never have been constituted. I do not believe it would have received ten votes in both houses."¹

Action on the preamble and resolutions presented by the joint

¹*Maine Historical Society Coll.*, First Series, VIII, 89.



ISRAEL WASHBURN.

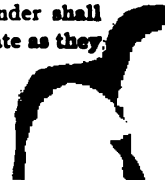
committee was taken May 25, 1842, after they had been recommended for amendment. As amended they were passed by a vote of 177 to 11, as follows:

“Whereas the preceding Legislature of this State, in conformity with the well-settled conviction of all the people thereof, and with incontrovertible evidence before them on the subject, have uniformly declared that the boundary of Maine, on its northern and northeast frontiers, as designated in the treaty of 1783, can be laid down and fixed according to the terms of the treaty; and that such line embraces all the territory over which this State claims property, sovereignty and jurisdiction; and the executive and Congress of the United States, having recognized the validity of that claim in its full extent, this legislature renews such declarations in the most solemn manner; and

“Whereas, for a series of years, every attempt to adjust the vexed questions in regard to the establishment of the said boundary having proved ineffectual, it has been represented to the government of this State that the minister plenipotentiary and special of her Britannic Majesty at Washington, has officially announced to the government of the United States, that he has authority to treat for a conventional line, or line by agreement, on such terms and conditions, and with such considerations and equivalents as may be thought just and equitable; and, that he is ready to enter upon a negotiation for such conventional line as soon as the government of the United States shall say that it is authorized and ready on its part, to commence such negotiation; and

“Whereas, the government of the United States, not possessing the constitutional power to conclude any such negotiation without the assent of Maine, has invited the government of this State to co-operate to a certain extent, and in a certain form, in an endeavor to terminate a controversy of so long duration:

“Now, considering the premises, and believing that the people of this State, after having already manifested a forbearance, honorable to their character, under long continued violations of their rights by a foreign nation; and, though not disposed to yield to unfounded pretensions, are still willing, in regard to the proposal now made by the general government, to give additional evidence to their fellow citizens throughout the United States of their desire to preserve the peace of this Union, by taking measures to discuss and conclude, if possible, the subject in controversy in a manner that will secure the honor and interests of the State; this Legislature adopts the following resolutions, with the understanding, however, that in the event of a failure in such endeavor towards an arrangement, no proceedings thereunder shall be so construed as to prejudice in any manner the rights of the State as they have been herein asserted to exist:



"Resolved, That there shall be chosen, by ballot, in convention of both branches of the Legislature, four persons who are hereby constituted and appointed commissioners on the part of this State, to repair to the seat of government of the United States and to confer with the authorities of that government touching a conventional line, or line by agreement, between the State of Maine and the British provinces, having regard to the line designated by the treaty of 1783, as uniformly claimed by this State, and to the declarations and views expressed in the foregoing preamble, and to give the assent of this State to any such conventional line, with such terms, conditions, considerations and equivalents as they shall deem consistent with the honor and interests of the State; with the understanding that no such line be agreed upon without the unanimous consent of such commissioners.

"Resolved, That this State cannot regard the relinquishment by the British government of any claim heretofore advanced by it to territory included within the limits of the line of this State, as designated by the treaty of 1783 and uniformly claimed by Maine, as a consideration or equivalent within the meaning of these resolutions."¹

It was understood that the commissioners would be taken from the two political parties in the state. A ballot resulted in the choice of William Pitt Preble and Edward Kavanagh representing the Democrats of Maine, and Edward Kent and John Otis representing the Whigs. The governor of Massachusetts appointed three commissioners, Abbot Lawrence, John Mills and Charles Allen.

This action of the Legislature was commended with great unanimity by the Maine newspapers. The *Daily Advertiser*, Portland, June 1st, contained this editorial comment: "The appointment of commissioners, with full and unlimited powers to settle our boundary line in the exercise of a sound discretion only, was a matter which called for calm, dispassionate discussion, and necessarily required a little time. With the exception of one day, the debates on this subject were conducted with a spirit of candor and harmony seldom witnessed in our legislative halls; and it should be a matter of gratification to every good citizen to know that their representatives have nobly seconded their desires to have this vexed and irritating question of the boundary line


¹Three minor resolutions with reference to the commissioners followed. *Resolves of Maine*, 1842, 110, 111.

peaceably and honorably settled. The public press of our State (with a single exception), which is a true index of the public mind, were favorably disposed to the appointment of commissioners with ample powers to terminate a controversy of half a century's duration. The Legislature have carried out the wishes of the people by the appointment of commissioners, and it is now for them to perform the responsible duties for which they have been selected." The *Bangor Democrat* had this expression of approval: "We did not anticipate such remarkable unanimity, and cannot but admire the patriotic feeling that was all powerful in allaying party spirit and uniting all interests in the common cause. The attitude the State has assumed has prepared the way, we hope, for a favorable disposition of the question; but if the parties cannot agree upon terms we shall have the proud satisfaction of knowing that we have not unreasonably interposed obstacles to prevent it. From the conciliatory course now taken we can hereafter appeal with the more confidence to the general government and the people of the Union to aid us in forcibly asserting our rights which could not be obtained by milder measures. But we hope for the settlement of difficulties, and shall rely on the good faith of the other party to the controversy until events show that our confidence has been misplaced."¹

¹ Cited by *The Daily Eastern Argus*, Portland, June 1, 1842.

CHAPTER XVIII.

THE ASHBURTON-WEBSTER NEGOTIATION.

HE Maine commissioners proceeded to Washington without delay, arriving at the capital on June 12th. Lord Ashburton had now been in the country about two months, but his formal official correspondence with Mr. Webster did not begin until after the arrival of the Maine commissioners. In his first letter, the British envoy expressed the opinion that no advantage was to be derived by again going over the general grounds on which hitherto the United States and Great Britain had rested their territorial claims. All arguments, he said, had been exhausted. Any new attempt must rest for its success on the presumption that previous efforts having failed, there remained the only alternative of a compromise unless the two countries would make a second trial of arbitration, with its delays, troubles and expense, and in defiance of probable ill success. In fact, he trusted that all parties interested would come to the conclusion that the case could be considered more fairly by the two governments than by any third party.

With this view of the case, Lord Ashburton called attention to what he regarded as some public misapprehensions concerning the controversy. It had been maintained, he remarked, that the whole trouble began in 1814; until that time, it was asserted, the line claimed by Maine was undisputed by Great Britain; that the British claim was founded on a desire to obtain the means of conveniently connecting the British provinces in North America. This last assertion, he said, was founded on the discussions that preceded the treaty of Ghent in 1814. Such a proposal was submitted by the British plenipotentiaries for a revision of the boundary line on the ground that Great Britain desired to secure favorable communications between Lower Canada and the mari-



LORD ASHBURTON,
From portrait in the State Department in Washington.

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time provinces. Not long after, the British representatives, in a conference with the representatives from the United States, maintained that the line claimed by this country, interrupting the communications between Halifax and Quebec, never could have been in contemplation by the negotiators of the treaty of 1783; and that this view pervaded all the communications between the plenipotentiaries of the two countries at Ghent. It was notorious, he said, that at that time different opinions existed as to a boundary line from the head of the St. Croix. This was "so clearly known and admitted by the American plenipotentiaries" that they offered, as a preamble to their fourth article, these words: "Whereas, neither that part of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers as the northwest angle of Nova Scotia, nor the northwesternmost head of the Connecticut river, has yet been ascertained," etc. In other words, the point was pressed by Lord Ashburton that the boundary question was a matter in dispute long before the year 1814, and his only object in referring to it, he said, "was to correct an error that had arisen, which seemed to have been circulated to such an extent as to make some refutation helpful to any attempt to an equitable settlement."

As to the present position of Great Britain, Lord Ashburton had this to say: "The territory in controversy is, for that portion at least which is likely to come to Great Britain by any amicable settlement, as worthless for any purposes of habitation or cultivation as probably any tract of equal size on the habitable globe; and if it were not for the obvious circumstance of its connecting the British North American provinces, I believe I might venture to say that, whatever might have been the merit of our case, we should long since have given up the controversy, and willingly have made the sacrifice to the wishes of a country with which it is so much our interest, as it is our desire, to maintain the most perfect harmony and good will."¹

¹*House Executive Documents, 27th Congress, Third Session, II, 31-34.*

The first of the official interviews between Mr. Webster and Lord Ashburton was held on June 18th. At this conference, Mr. Webster requested Lord Ashburton to prepare a formal statement of his views with reference to the negotiations and to the expectations of his government. This Lord Ashburton did in a letter dated June 21st. The case, he said, was one for an agreement by compromise; and he added, as his own conviction, that it was the intentions of the parties to the treaty of peace of 1783 to leave to Great Britain, by their description of the boundaries, the whole of the waters of the river St. John. As to the principles and conditions on which he thought the compromise should be attempted, Lord Ashburton referred to the intentions of the framers of the treaty of 1783 as recorded in the preamble to the provisional articles: "Whereas reciprocal advantages and mutual conveniences are found by experience to form the only permanent foundation of peace and friendship between States," etc. He considered it desirable, therefore, that each government should retain under its jurisdiction such inhabitants as for some time had been so living, and to whom a transfer of allegiance might be distressing. In justification of the necessity he felt for insisting on a line departing to a considerable extent from the line of the river St. John, he referred to the French settlement at Madawaska as originally formed from the French establishments in Acadia and continued uninterruptedly under French or British dominion. The inhabitants there, he said, had professed great apprehension of being surrendered by Great Britain and had lately sent an earnest petition to the queen, deprecating such a surrender. There would be evident hardship, even cruelty, in separating this now happy and contented people, to say nothing of the bickering and probable collisions, by adopting a line which under other circumstances would be satisfactory to his government. Indeed, he would consider such a separation a harsh proceeding. It would be an abandonment of the great object which should constantly be held in view—the fixing of such a boundary as would be the least likely to occasion future strife.¹

¹*House Executive Documents, 27th Congress, Third Session, II, 31-34.*

In a lengthy reply to Lord Ashburton's notes of June 13th and 21st, Mr. Webster, July 8th, called attention to the fact that both houses of Congress, to say nothing of the sentiments of the governments and people of the states more directly interested, had asserted the validity of the American claims by a unanimity experienced on few other subjects; and he added the reasons that had produced in the country the conviction that a boundary line could be run according to its description in the treaty of 1783. Without considering the arguments and proofs sustaining these reasons, he referred Lord Ashburton to a paper prepared by the commissioners from Maine, "which," he said, "strongly presents the subject on other grounds and in other lights."

Referring to Lord Ashburton's statement in his letter of June 21st, that the St. John River for some distance upward from its intersection by the line due north from the source of the St. Croix would be a convenient boundary, Mr. Webster assented; but how far, and to which of the sources of this river should this line extend, was a very important question. Above Madawaska, the river turns south, leaving far to the north the line of communication between Canada and New Brunswick. To a line south of the St. John, Mr. Webster saw insurmountable objections. A river line, he said, is always clear and comprehensible. If we depart from it, where shall we find another line equally natural? "I cannot hold out the expectation to your lordship that anything south of the river can be yielded."

As to the further extension of the boundary, Mr. Webster said that the United States, having in view proper equivalents, would not object to a line beginning at the middle of the main channel of the St. John, where the river is intersected by the due north line from the source of the St. Croix; thence to a point three miles westerly of the mouth of the Madawaska; thence by a straight line to the outlet of Long Lake; thence, westerly by a direct line to the point where the river St. Francis empties itself into the lake called Pohenagamook; thence, continuing in the same direct line to the highlands dividing the waters falling into

the river Du Loup from those falling into the St. Francis. This would secure to England a free intercourse between Canada and New Brunswick, and, with the navigation of the St. John yielded to the United States, would meet the wants of all parties. The use of the river St. John, "free from tax, toll, or other liability," he added, "is an object of considerable importance to the people of Maine."¹

In his reply, July 11th, Lord Ashburton expressed regret that Mr. Webster's letter, and the paper of the Maine commissioners, contained so much of a renewal of the old controversy. The commissioners from Maine, however, had presented this that was new, namely, that they now found the northwest angle of Nova Scotia at the head of the Madawaska River, which was "always considered as the real St. John." What, then, he asked, had become of the point between the Metis and one of the tributaries of the Ristigouche, so long contended for by Maine? The two points must be fifty miles apart, and both could not be the lost angle of Nova Scotia. That search, therefore, must be abandoned. Moreover, an examination of the maps and documents, said Lord Ashburton, had led him to a very strong conviction that the highlands contemplated by the negotiators of the treaty were the highlands "at the head of the Penobscot, Kennebec and the rivers west of the St. Croix;" and he referred to proposals—British, as has hitherto appeared—to search for these highlands to the west, where alone he believed they would be found "to answer perfectly the description of the treaty."

As to Mr. Webster's statement that the government of the United States could not consent to a line that would bring the line south of the St. John without some equivalent of territory to be taken from the limits of that in dispute, Lord Ashburton said he had no power to give up any territory, Great Britain being unwilling to dispose arbitrarily of the persons and property of subjects "living by preference under her authority." Yet he might have felt justified in yielding had not the latter part of Mr.

¹ *House Executive Documents*, 27th Congress, Third Session, II, 41-47.

Webster's proposal, if finally persevered in, forbidden all hope of any settlement whatever. The reference was to a proposal for a boundary line running from the north side of the St. John, three miles above its junction with the Madawaska, over an arbitrary line until it somewhere reached the St. Francis. This would give to Great Britain less than the arbiter, he said, while at the same time she would be called upon to give up what the arbiter awarded to her—a proposal which he was at a loss to account for; and he was inclined to think that a conference would afford a better chance of success than correspondence.)

In closing, Lord Ashburton again referred to Great Britain's concession of the use of the St. John River in floating lumber. "It is said in the memorandum of the Maine commissioners, that this conceded navigation will be as useful to the town of St. John as to the lumbermen of Maine; but it will not escape you that, even if this be so, it is a concession necessary to give any value whatever to so bulky an article as lumber, which being not otherwise disposable, would bear any reasonable toll which the provincial authorities of New Brunswick might think it expedient to levy upon it. Farther, it should not be forgotten that the timber, once at the mouth of the St. John, will have the privilege of reaching the British as well as other markets; and, lastly, that it is a very different thing to hold a privilege of this important description by right, than by mere sufferance."¹

Lord Ashburton's letter of June 21st Mr. Webster placed in the hands of the members of the Maine commission, also Mr. Sparks' red-line map; and on the 29th of June the commissioners gave written expression to their views concerning the Ashburton letter. If, they said, the proposed conventional line must be established on the south side of the St. John, so as to include in British territory the Madawaska settlement, and such a line is made by the British government a *sine qua non*, they, as commissioners on the part of the State of Maine, considered it their duty to say that any attempt at an amicable adjustment of the boundary contro-

¹ *House Executive Documents, 27th Congress, Third Session, II, 48-53.*

versy on that basis, with the consent of Maine, would be fruitless. Such a proposition had surprised and pained the commissioners, requiring, as it did, that Maine should yield, beyond what had been previously indicated, "a valuable territory of more than fifty miles in extent, lying along the south side of the St. John, extending from the due north line westerly to Fish river." The governor, Legislature and people of Maine had not expected such a proposition, and no commissioners would have been sent to consider it. "In this state of things," remarked the commissioners, "it becomes a bounden duty, on the part of the undersigned, to say to you, that if the yielding and relinquishing on the part of the State of Maine, of any portion of territory, however small, on the south side of the St. John, be with her Majesty's government a *sine qua non* to an amicable settlement, the mission of the Commissioners of Maine is ended."

With the consent of the Massachusetts commissioners, however, they made a like proposal to that contained in Mr. Webster's letter to Lord Ashburton July 8th, and already mentioned. The reasons presented by the commissioners for proposing such a line in preference to any other were as follows: (1) It yielded to Great Britain all that she needed in order to secure to her unobstructed communication between Canada and her maritime provinces, and, with the free navigation of the St. John, seemed to meet the wants of all parties. (2) The most natural boundary from the due north line to the highlands of the treaty would be the St. John and the Madawaska to its source. But, as this would cut off communication between the British provinces at the Grand portage, the proposed line removed this difficulty. (3) As Great Britain had restrained her minister from granting any territorial equivalent to Maine, a further concession of territory on the part of Maine could hardly be expected from her. The proposition, continued the commissioners, involved a sacrifice of no inconsiderable portion of the just claims and expectations of Maine; but it was made in the spirit of peace and to satisfy

her sister states that Maine was not pertinacious or unreasonable, but ready to make large sacrifices for the general good.

The communication closed with a reference to the French neutrals at Madawaska, who, according to Lord Ashburton, professed great apprehension of being surrendered by Great Britain. The grants that have been made to them should be confirmed, it was stated, and the right should be reserved to them to elect under which government they would remain citizens or subjects. Mention also was made of the hard lot and sufferings of these people, and of their fathers, giving them a claim to the sympathies of their neighbors. They supposed when they settled at Madawaska that they were within the jurisdiction of the United States, the friend and ally of France. "With a knowledge of their history, and the wrongs they have suffered," continued the commissioners, "it will be difficult for the people of Maine to bring themselves into the belief that these people are opposed to living under the mild and gentle sway of our free institutions. It will be equally difficult for the people of Maine to satisfy themselves that it is only from a lively and disinterested sympathy for these poor Frenchmen that the government of Great Britain is so solicitous to retain possession of the south bank of the St. John, extending from the due north line more than fifty miles up to Fish river."

Lord Ashburton, in his letter to Mr. Webster, had prepared the way for this reference to the tragic story of the exile of the French Acadians; but he could hardly have expected this added enlargement of the story made by the Maine commissioners.

On July 15, 1842, after the commissioners had made use of ample time for conferring with the Maine delegation in Congress and others familiar with the boundary controversy, Mr. Webster again addressed them in a letter, in which, after a reference to frequent conferences held with Lord Ashburton, he called attention to a boundary line described in an inclosed paper, which he had reason to believe the British minister would accept. The territory in dispute, he said, contained 12,027 square miles, equal

¹*House Executive Documents, 27th Congress, Third Session, II, 70-78.*

to 7,697,280 acres. By the line indicated in the paper there was assigned to the United States 7,015 square miles, equal to 4,489,600 acres; and to Great Britain 5,012 square miles, equal to 3,207,680 acres.¹ As an equivalent to the territory relinquished by the United States the British minister, Mr. Webster thought, would probably agree to the use of the St. John River free from all discriminating tolls or inabilities of any kind, a privilege that would greatly enhance the value of the territory and the timber growing upon it.

In submitting these considerations to the Maine commissioners, Mr. Webster said he had authority for the statement that if they and the commissioners from Massachusetts should assent to the line thus described, the United States would pay to Maine and Massachusetts two hundred and fifty thousand dollars, to be divided between them in equal moieties, and also pay for the expenses incurred by these states for the maintenance of the civil *posse* and the survey it had been found necessary to make. The line suggested and the compensations and equivalents could not be said to be such as had been hoped for, he added, but "as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would tend to further inconvenience and to the incurring of further expenses, and as no better occasion, nor, perhaps, any other occasion, for settling the boundary by agreement, and on the principle of equivalents, is ever likely to present itself, the government of the United States hopes that the commissioners of the two states will find it to be consistent with their duty to assent to the line proposed, and to the terms and conditions attending the proposition."²

The description of the proposed boundary, inclosed in Mr. Webster's letter, was as follows: "Beginning at the monument at

¹ "Of the general division of the territory, it might be said, that, while the portion remaining to the United States was in quantity seven-twelfths, in value it was at least four-fifths of the whole." J. B. Moore, *International Arbitrations*, I, 150.

² *The Works of Daniel Webster*. Boston, Little & Brown, 1851, VI, 276-297.

the source of the river St. Croix, as designated by the commissioners under the fifth article of the treaty of 1794, between the governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the survey of the two governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows to the outlet of the Lake Pohenagamook; thence southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line and in the nearest direction—but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, then the said point shall be made to recede down the said river to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of forty-six degrees, twenty-five minutes, intersects the southwest branch of the St. John; thence, southerly, by the said branch, to the source thereof, in the highlands at the Metjarmette portage; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the forty-fifth degree of latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence.''¹

¹*House Executive Documents, 27th Congress, Third Session, II, 81.*

This letter from Mr. Webster of July 15th was also sent to the commissioners of the Commonwealth of Massachusetts. It brought very great disappointment to the commissioners of both states, and especially to those from the State of Maine. The Massachusetts commissioners made no reply until July 20th. The proposed boundary line, they said, was not what they had expected to secure "in view of the strength of the American claim." The proposed boundary called for the relinquishment of territory to which Massachusetts believed she had a clear and indisputable right. So strong was her conviction with reference to the matter, that rather than surrender any portion of that territory without just equivalents, she would prefer an appeal to the same arbitrament by which the acknowledgment of her right was originally obtained. Other considerations, however, were forceful. The well-known desire of the people of the United States for a speedy settlement of the boundary controversy, and the request of the general government that Massachusetts would yield her consent, had weight with the Massachusetts commissioners; and with a request that the pecuniary compensation to be paid by the federal government to the commonwealth should be increased to the sum of one hundred and fifty thousand dollars, they gave their consent to the proposed boundary line.¹

The Maine commissioners made their reply on July 22nd. For an entire week they had given to Mr. Webster's letter the "grave deliberation" for which the secretary of state had asked. The boundary line in this new proposal was not that for which they had labored, they said. While they came to Washington with a firm conviction with reference to Maine's rights, they also came with the disposition and determination to meet a conciliatory proposition for a conventional line ready for any reasonable equivalent to yield all that the other party desired or asked for, namely, such territory as would enable the people of Canada and the maritime provinces to maintain a direct and uninterrupted communication. This, they had understood, was the only professed object

¹*House Executive Documents, 27th Congress, Third Session, II, 90, 91.*

that Great Britain had in view, and to this they had decided to give consent. They were met at the outset, however, by a proposition that required on Maine's part the cession of all the territory north of the St. John, and also territory south of that river comprising the Madawaska settlement, with no other equivalent than the free use of the St. John River. Although later there was a substantial withdrawal of Lord Ashburton's claim to any territory south of the river St. John, there was no relinquishment or even modification of his claim to territory north of that river.

Moreover, as to the terms and conditions attending the proposition now made, the negotiations on their part had been conducted with no mercenary ends in view, having no design to extort unreasonable equivalents or extravagant compensation. "The State of Maine," said the commissioners, "had always felt an insuperable repugnance to parting with any portion even of her disputed territory for mere pecuniary recompense from adverse claimants. . . . All the pecuniary offers contained in your note, most liberally construed, would scarcely recompense and repay to Maine the amount of money and interest which she has actually expended in defending and protecting the territory from wrongs arising and threatened by reason of its condition as disputed ground." Therefore, regarding the proposition in Mr. Webster's letter as involving the surrender of more territory than the avowed objects of Great Britain required, as removing also landmarks from the well-defined boundary of 1783, and as insisting upon the line of the arbiter in its full extent, the commissioners declared their inability to bring their minds to the conviction that the proposal was "such as Maine had a right to expect."

The Maine commissioners, therefore, were even more disinclined to accept the proposed terms than were the Massachusetts commissioners; but they recognized the fact that it would be unpatriotic and unwise not "to overcome their objections to the proposal in so far as to say, that if, upon mature consideration the Senate of the United States shall advise and consent to the ratification of a treaty, corresponding in its terms" with Mr.

Webster's proposal and with the conditions conveyed in a memorandum accompanying their note, they would, as authorized, give the assent of the state to the proposed conventional line, in accordance with the proffered terms, conditions and equivalents as mentioned by the secretary of state.¹

In an inclosed memorandum the Maine commissioners requested that the following provisions, or at least their substance, should have a place in the proposed treaty: (1) That the amount of the disputed territory fund, received by the authorities of New Brunswick for timber cut on that territory, should be paid over to the United States for the use of Maine and Massachusetts in full; or a gross sum, to be agreed upon by the commissioners of Maine and Massachusetts, should be paid by Great Britain as a settlement of that fund; and that all claims, bonds and securities taken for timber cut upon the territory should be transferred to the authorities of Maine and Massachusetts. (2) That all grants of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, should be confirmed, and all equitable possessory titles should be quieted to those who possess the claims. There should be, also, a reciprocal provision for the benefit of settlers falling within the limits of Maine. They desired, further, that a voluntary suggestion of the British minister in regard to John Baker, and others similarly situated, should be carried into effect, so as to secure their rights. (3) The free right of navigation on the St. John should include the products of the soil, as well as the products of the forest, and no toll, tax or duty should be levied upon timber coming from the territory of Maine.²

Having thus received from the commissioners of Maine and Massachusetts the assent of their respective states to the proposed conventional line, Mr. Webster, on July 27th, informed Lord Ashburton that he was ready to propose a line of division between the United States and the British provinces of New Brunswick

¹*House Executive Documents, 27th Congress, Third Session, II, 91-97.*

²*Ib., 27th Congress, Third Session, II, 97.*

and Canada conforming in substance to the result of their many conferences. That line he now indicated with considerable fullness, adding: "When the proposed line shall be properly described in the treaty, the grant by England of the right to use the waters of the river St. John for the purpose of transporting to the mouth of that river all the timber and agricultural products raised in Maine, on the waters of the St. John, or any of its tributaries, without subjection to any discriminating toll, duty or disability, is to be inserted. Provision should also be made for quieting and confirming the titles of all persons having claims to lands on either side of the line, whether such titles be perfect or inchoate only, and to the same extent in which they would have been confirmed by their respective governments, had no change taken place. What has been agreed to, also, in respect to the common use of certain passages in the rivers and lakes, as already stated, must be made matter of regular stipulation. There was a fund arising from the sale of timber according to an arrangement which formerly took place between the two governments. The treaty should provide for carrying that arrangement into effect. There should also be an article for the creation of a commission to run and mark such parts of the line between Maine and the British provinces as has not been marked." ¹

Lord Ashburton found Mr. Webster's statement substantially correct in all its parts, and declared his readiness to proceed to draw up the treaty.² This work was promptly executed, and Mr. Webster and Lord Ashburton affixed their signatures to the treaty³ on August 9, 1842.

In the third article of the treaty the navigation of the river St. John is made free to both countries.⁴

¹*House Executive Documents*, 27th Congress, Third Session, II, 55-59.

²*Ib.*, 27th Congress, Third Session, II, 59, 60.

³*Ib.*, 27th Congress, Third Session, II, 25-30.

⁴Because of Maine's complaint in 1844 that New Brunswick had imposed a duty of a shilling a ton on all timber shipped from any port in the province, Great Britain, in 1871, in remedy thereof, engaged "to urge upon Canada and New Brunswick that no export duty, or other duty, should be levied on

In the fourth article provision was made for the confirmation of such grants of land as had previously been made by either party in territory left by the treaty in the jurisdiction of the other; also for the confirmation of all equitable possessory claims based on the possession and improvement of any lot or parcel of land by the person in actual possession, or by those under whom he claimed, more than six years before the signing of the treaty.

In the fifth article permission was made for the distribution of the "disputed territory fund," as suggested by the Maine commissioners. Of this fund the United States agreed to pay to Maine and Massachusetts their respective portions, and also to satisfy their claims for expenses incurred by them in protecting the disputed territory and in making a survey thereof in 1838. The United States further agreed "with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor from the government of her Britannic Majesty."

In the sixth article of the treaty provision was made for the establishment of the boundary (as described) by two commissioners, one to be appointed by the United States, and one by Great Britain.¹

lumber or timber of any kind," cut on territory "watered by the St. John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick." Moore, *International Arbitrations*, I, 152, note.

¹*Report of the [Maine] Commissioners, under Resolves of May 26, 1842, in Relation to the Northeastern Boundary.* Augusta, 1843, 83-87.

CHAPTER VII.

THE AMERICAN TREATY QUESTION.

NOTWITHSTANDING the Maine commissioners had given their consent to the proposed conventional line provided the Senate of the United States on mature consideration should in advice they unanimously entertained the hope that the discussion of the treaty would result in some modifications of its terms in the interest of the border state. President Tyler communicated the treaty to the Senate August 11, 1842. It established, he said, the boundary line from the source of the St. Croix to the St. Lawrence for considerations satisfactory to Maine and Massachusetts, the chief of these considerations being the privilege of transporting the lumber and agricultural products of Maine from the St. John to the ocean free from imposition or exaction. To a country, covered by forests of great value, and much of it capable of agricultural improvement he regarded this privilege, perpetual in its terms, as a matter of importance upon which the opinion of intelligent men was not likely to be divided.²

The treaty, with the president's message and accompanying documents, was referred to the committee on foreign relations. That committee, August 15th, reported the treaty without amendments, and it was made the order of the day in the Senate for August 17th.³ At that time, Mr. William C. Rives,⁴ of Virginia, chairman of the committee, in opening the debate said that while the committee and a large majority of the people of the United States were clear in their conviction of the justice of the American

²*Messages and Papers of the Presidents*, IV, 262-263.

³*Congressional Globe*, 23th Congress, Third Session, 1.

⁴He was twice minister to France, and thrice elected a member of the Senate of the United States.

claim, it was no longer possible to stand uncompromisingly on the ground of right. We have made the question a subject of arbitration, he remarked, and the opinion of the arbiter, however wanting in legal obligation, has been declared to the world and is against our claim. Since then, this expedient has been rejected by Great Britain, the United States and the State of Maine. In this connection Mr. Rives referred to the Sparks and other maps hitherto mentioned; but while denying any just weight to them affecting the American claim, he saw the use that might be made of them in event of another arbitration. In order to terminate, therefore, this protracted controversy, he held that the only remaining expedient was the establishment of a new and well-defined conventional line; and he was authorized to say that a threefold option had been offered to the Maine commissioners—the award, arbitration, and the arrangement now before the Senate. The last, the commissioners had deliberately elected. To the committee, also, from a national point of view, the arrangement before the Senate presented equally obvious advantages.¹

Levi Woodbury,² of New Hampshire, following Mr. Rives, thought it not patriotic, or warranted by the facts, to seek to justify a ratification of the treaty by arguments derived from loose conjectures of itinerant Americans in Europe. The French map of 1755, which, with its red lines, running west from the St. Croix, had been made to occupy so prominent a place in the debate, was doubtless one illustrating the boundaries between the French and British colonies in America, before the conquest of Canada by Great Britain and its cession in 1763. There is a similar map in the French atlas on the table of the secretary, which he had procured from the state department. The publications of that earlier day were full of such maps. Whatever might be the decision of the Senate with reference to the treaty, that decision should not be based on any doubt created by old maps.³

¹ *Appendix to Congressional Globe*, 27th Congress, Third Session, 59–62.

² He was secretary of the navy, 1831–1834, and secretary of the treasury, 1834–1841.

³ *Appendix to Congressional Globe*, 27th Congress, Third Session, 27, 28.

Thomas H. Benton,¹ of Missouri, continued the debate. Mr. Rives had referred to Maine's consent to the conventional line of the treaty. If such consent had been given, he said, it would signify nothing. The boundaries in question are not state but national; they are not in the custody of Maine, but of the whole Union. "The consent of Maine! What was that consent? How obtained and how used? Isolated from her sister States—from Massachusetts, New Hampshire, Vermont, New York and Michigan—all of which were conciliated in favor of the treaty; pressed upon by her own government, which presented the British proposition and urged its acceptance, informed that nothing better could be expected; warned that this might be the last chance for settling the question by agreement; presented as the sole obstacle to the peace and happiness of two great nations; thus isolated, urged and menaced, the Maine Commissioners so far assented as to agree to the sacrifice upon condition that the Senate of the United States, on mature consideration, should advise and consent to the ratification of the treaty;" and the senator cited the language of the Maine commissioners in yielding their consent, as they gave reluctant expression to it. Limiting himself at present to the fact that Maine did not consent to the wrong which was done to her and to the United States, but made that consent dependent and conditioned on the judgment of the Senate after mature consideration, Mr. Benton closed with the remark that his general objections to the treaty would be presented at another time.²

The Sparks map had made no impression upon Mr. Benton. He, too, had found a map with a red line, and he related an interesting conversation he had with Jefferson in his later years in a long winter evening, in which Jefferson referred to a collection of books, maps, etc., pertaining to this country, which, with the sale of his library to the United States, had gone to the library of Congress. It had occurred to him to ask the librarian to send to

¹ He was a member of the Senate from 1821 to 1851.

² *Appendix to Congressional Globe, 27th Congress, Third Session, 7.*

him the Jefferson maps, and he was looking over the collection, when the chairman of the committee on foreign relations was calling the attention of the Senate to the Sparks map. Looking to see if the same map was in Jefferson's collection, he fell upon "the same red-line map made in Paris in 1784, dedicated and presented to Franklin. This he exhibited to the Senate and had it placed on the secretary's table for the inspection of senators."¹ Evidently there were red lines on many maps.²

On Friday, August 19th, Mr. Williams, of Maine, continued the debate. This, he said, was not the entertainment to which his state was invited, and he recited the facts connected with the

¹*Appendix to Congressional Globe, 27th Congress, Third Session, 16.* The matter of the red-line map was brought up at the next session of Congress by Colonel Benton, who, January 4, 1843, referring to the debate concerning the treaty, said: "When he saw that the senator from Virginia [Mr. Rives] was yet in the act of pressing the importance of the map referred to by Mr. Sparks, he interrupted the senator by calling, 'Here is the very same red line on Mr. Jefferson's map,' and on comparison it was found to correspond exactly. He proclaimed the red line loudly to prove that Mr. Sparks' secret was no secret at all." *Congressional Globe for 1842-1843, XII, 111.*

²In 1838, Mr. Webster received information that a gentleman in New York had a copy of Mitchell's map with lines on it corresponding to the British claim. Mr. Webster was told that the map had been found among the papers of Baron Steuben, of Revolutionary fame, and that there was reason to suspect that the map could be traced to Mr. Jay, etc., etc. It was also said that the British consul in New York was endeavoring to obtain it and had offered a very large price for it. On looking at it Mr. Webster concluded it would be prudent to keep it on this side of the water, and he bought it for \$200.00. When the map was shown to Mr. Charles S. Daveis, he wanted it for the State of Maine and paid Mr. Webster for it. The members of the governor's council in Maine declined to allow this expenditure "unless they could understand distinctly for what it was paid." Governor Kent and Mr. Daveis were not then ready to yield their secret with reference to the map, and Mr. Daveis was not reimbursed until some time after. The map evidently was one of other maps in existence in the last half of the eighteenth century, but it had no more value than the Sparks map, which long ago went into deserved obscurity. Recent search for it has not been rewarded. It is neither in the state department in Washington, nor in the library of Congress. The Sparks papers are in the library of Harvard University, but the Sparks map is not among them.

appeal that was made to the governor of Maine by the government of the United States, asking him to convene the Legislature in order that the national government might receive authority to settle the boundary controversy on such terms as would be deemed just and equitable. Opposed to arbitration, Maine listened to the appeal made by the president through the governor. Commissioners were appointed, and the commissioners made their way to Washington in the hope of aiding the general government in a manner honorable to both nations, and with due regard to the rights and convenience of the subjects of both countries. How these hopes had failed of realization the senator proceeded to show from the course of the negotiations. The boundary and equivalents proposed by Lord Ashburton were found to be wholly unacceptable, and therefore were rejected. They then presented a counter-proposition to Lord Ashburton—one "more liberal, and yielding more for peace and good neighborhood than could have been anticipated by the people or by the Legislature of Maine. That counter-proposition was rejected; and there the subject would have rested, but for the renewed efforts of the general government itself, whereby the line and equivalents mentioned in the treaty now under consideration were presented to the commissioners."

This was the settlement proposed to the Maine commissioners, and they were told that no more advantageous arrangement was likely to be expected. By whom were they told? "By the president and that government which is bound by the Constitution to protect Maine in all her rights, and without whose protection it is vain for any State to contend with a foreign government, however just and well founded her claim. Thus abandoned and thus admonished by the only power to which Maine could look for the maintenance and establishment of her just rights, it is said that she has *assented* to the line, and hence, that we are called upon merely to ratify and confirm what has been agreed upon by the parties immediately interested in the controversy. In this condition of things," added the senator, "I pray you to hear

these commissioners," and Mr. Williams read the letter they sent to Mr. Webster. "This is the assent, if assent it may be called, which is to authorize and induce the Senate to ratify the treaty. What is it? A clear, strong and convincing argument against submitting to the terms proposed; and concluding that, *if the deliberate conviction of her sister States shall pronounce the proposed boundary and equivalents honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birth-right of the people of Maine, the commissioners have determined to overcome their objections to the proposals as far as to say that if, upon mature consideration, the Senate of the United States shall advise and consent to the ratification of the treaty upon those terms and conditions, they give the assent of Maine thereto.*"¹

In closing his speech Mr. Williams offered the following resolution, and asked for the yeas and nays upon its adoption: "Resolved, That the treaty and documents now under consideration be recommended to the Committee on Foreign Affairs with instructions to report a resolution directing the President of the United States to take immediate possession of the disputed territory, and to report such contingent measures as, in their opinion, may be necessary to maintain the just right of the nation." The resolution was lost: yeas 8, nays 31.²

Mr. Calhoun, of South Carolina, also addressed the Senate.³ Reviewing the Senate discussion, he asked, "Are the objections to the boundary as actually agreed on, and the stipulations connected with it, such as ought to cause its rejection?" This question, he said, belonged much more to the State of Maine than to

¹*Appendix to Congressional Globe, 27th Congress, Third Session, 52-56.*

²*Congressional Globe, 27th Congress, Third Session, 1.*

³The printed records of the Senate do not indicate on which day of the debate Mr. Calhoun delivered this speech. In the fourth volume (page 212) of the *Works of John C. Calhoun* (D. Appleton & Co., New York, 1854), he is said to have spoken on August 28th. But the Senate was not in session on that day. In fact, the Senate's consent to the ratification of the treaty was given on August 20th. It would seem, therefore, that the date, August 28th, may be a misprint for August 18th.

the Union. It is her sovereignty and soil largely that are in dispute, and it belongs to her in the first place to say what should be done. The rest of the Union should defend her just claims. So the controversy has been regarded from the first. President Jackson would have agreed to the king of Holland's award had not Maine objected; and to overcome her objection he was prepared, in order to get her consent, to recommend that Congress should give her one million acres of the public domain, worth at least a million and a quarter of dollars. Shall the government now reverse its course and refuse to agree to that to which Maine has assented? It has been said, continued Mr. Calhoun, that this assent was coerced. It is true that Maine desired a more favorable boundary; but when the alternative of another reference to arbitration was presented, she waived her objection because of the risk, uncertainty and vexation of another submission of her claims to arbitration, and left it to the Senate to decide on the general merits of the treaty as it relates to the whole Union. In so doing, Maine acted wisely, patriotically. She has lost territory, even if the treaty is compared with the award of the king of Holland; but as an offset she has secured great and important advantages by the free navigation of the St. John, while if to this is added the money Maine is to receive for the expense of defending the territory, about \$200,000, and \$150,000 in consequence of her assent to the boundary, it will be seen that the state has not made a bad exchange, as compared with the award.¹

The closing speech in the debate was made by Mr. Buchanan, of Pennsylvania. A noteworthy part of the speech was that in which he reviewed the history of the negotiation between Mr. Webster and Lord Ashburton. The various stages by which the British minister obtained important concessions were mentioned, also the way by which the Maine commissioners were led on step by step to give their conditional assent to the treaty. Concerning the right of way over the disputed territory for which the British government asked, Mr. Buchanan insisted that if this was to be

¹*Congressional Globe*, 27th Congress, Third Session, 49-51.

surrendered, the navigation of the St. John would be the natural equivalent; but if, in addition to this, Great Britain asked a cession of soil and sovereignty north of the St. John, a fair equivalent would be a surrender to Maine of the strip of land north of Eel River on the right bank of the St. John, thus establishing a river boundary between Maine and New Brunswick. This, he said, was the confident expectation of Maine according to her commissioners; but they were informed that Lord Ashburton was "restrained by his instructions from yielding the island of Grand Manan, or any of the islands in Passamaquoddy Bay, or even any portion of the narrow strip of territory that lies between the due north line from the source of the St. Croix and the St. John, above Eel river, as an equivalent for any portion of the territory claimed by Maine as within her boundaries. . . . It was here that the rights of that state, and of the United States, were abandoned. If Lord Ashburton's instructions prohibited him from surrendering this strip of territory, new instructions could and would have been obtained, if they had been found necessary. According to his own declaration, Lord Ashburton could not have surrendered the Madawaska territory south of the St. John, yet he did surrender it even before it was possible for him to get new instructions from England. When the Maine Commissioners were induced to yield this point, all that they had so long contended for was abandoned."

Mr. Buchanan was not so forceful in the latter part of his speech. "Thus," he said, "have we yielded to a foreign power that ancient highland boundary for which our fathers fought. Thus has it been blotted out from the treaty which acknowledged our independence. Thus has England reclaimed an important portion of that territory which had been wrested from her by the bravery and the blood of our Revolutionary fathers." The restoration to England of "our mountain boundary" figured largely in this part of Mr. Buchanan's speech. Its value to England in case of war was magnified. "Along the base of these mountains she can, and she will," he said, "establish fortifications and mili-

tary posts from which she may at once penetrate into the very heart of Maine. . . . Why did Lord Ashburton insist upon its surrender with so much pertinacity and zeal? Because it not only covered Quebec and Lower Canada from our assaults, but exposed our territory to the assaults of England, without any interposing barrier. On the east, on the north, and on the west, Maine is now left naked and exposed to the attacks of our domineering and insatiable neighbor."¹

It is doubtful if words like these could have had any other effect than to weaken the impression that Mr. Buchanan sought to make. Evidently the partisan tone of the speech in places was not helpful. So, too, in closing the speech the speaker failed to convince his associates. An amendment to the treaty, proposed by Mr. Buchanan, and offered by another senator, failed of adoption by a vote of 34 to 10, and on Saturday, August 20th, the Senate consented to the ratification of the treaty by a vote of 39 yeas to 9 nays.²

The Maine senators in voting divided on party lines. With reference to Maine's contention as to the boundary line of the treaty of 1783, and the possibility of drawing that line on the face of the earth, Mr. Evans, a Whig, did not differ from his colleague, Mr. Williams, a Democrat. In fact, as has already appeared in this reference to the debate, there was no difference of opinion in the Senate as to the rightfulness of Maine's claim. Mr. Evans accepted Mr. Webster's view that arbitration had been tried and failed; that the country was weary of controversy; and that if any

¹*Appendix to Congressional Globe, 27th Congress, Third Session, 108.* For the whole speech see pages 101-110.

²Those who voted in the affirmative were Messrs. Archer, Barrow, Bates, Bayard, Berrien, Calhoun, Choate, Clayton, Crafts, Crittenden, Cuthbert, Dayton, Evans, Fulton, Graham, Henderson, Huntington, Kerr, King, Mangum, Merrick, Miller, Morehead, Phelps, Porter, Preston, Rives, Sevier, Simmons, Smith of Indiana, Sprague, Tallmadge, Tappan, Walker, White, Woodbridge, Woodbury, Wright, Young. Those who voted in the negative were Messrs. Allen, Bagby, Benton, Buchanan, Conrad, Lynn, Smith of Connecticut, Sturgeon, Williams. *Congressional Globe, 27th Congress, Third Session, 2.*

satisfactory settlement was to be obtained it must be in the nature of a compromise, with a suitable indemnity for Maine's sacrifices and with obvious international advantages. Having recently entered the Senate, Mr. Evans did not participate in the debate. At a dinner given to Lord Ashburton in the city of New York, September 1, 1842, however, replying to a toast in honor of Daniel Webster, Mr. Evans gave strong expression to his own convictions as to the services of the secretary of state in connection with the treaty, making mention of him as one who had "borne up the national honor and character and interests, in the laborious and arduous task assigned to him, in a manner of which I trust every American citizen will be proud."

CHAPTER XX.

THE TREATY IN MAINE.

AS the treaty negotiations drew to a close, anxious interest was manifested in Maine with reference to the results reached. The *Eastern Argus* (Portland), July 8, 1842, mentioned a New York rumor "entitled to credit," that the boundary question had been settled.¹ "It looks rather improbable," the *Argus* added. In the same paper, July 11th, reference was made to other rumors. It had been confidently stated, the *Argus* remarked, that a satisfactory arrangement had been made; and just as confidently, upon apparently as good authority, the reader was told that the statement had been denied. Preliminaries, it was suggested, had probably been arranged, which, if carried into effect, would be satisfactory to Maine; but nothing more could be affirmed. "If there should be no settlement, Maine will have done her duty nobly and honorably," was the added statement. It was suggested, however, that if a satisfactory settlement should be made, and the river St. John should become "the substantial line to the mouth, with its free navigation conceded, the arrangement will be worth millions." On July 15th, the *Argus* was still without more definite information, but it exhorted its readers to be patient, and give little heed to rumors, whether favorable or unfavorable. On the 18th, its faith in the diplomatic ability of the secretary of state was strong, and to strengthen the hearts of its readers these words were addressed to them: "We believe it will turn out that Mr. Webster has conducted our foreign negotiations with skill and industry and especially in the matter of the boundary, in which this State has so deep an interest." After more than a week of added watchful waiting, the

¹*New York Commercial Advertiser*, July 5, 1842.



Argus was able, on July 27th, to inform its readers that the treaty had been signed. "Judge Preble arrived in town this morning, bringing this information," was the announcement. How much information concerning the terms of the treaty was disclosed by the newly arrived commissioner was not stated. "The treaty will now go the Senate," the editor added, "and if approved by two-thirds of that body, the question will be settled. But if rejected, we shall have the ground to go over again." Hasty criticisms, based on rumors, were deprecated. Certain congressmen received this needed counsel: "We are sorry to see a premature agitation of the subject in the House of Representatives. The terms of the treaty should not be discussed by the members till acted upon by the Senate. If confirmed and appropriations shall become necessary in order to carry it into effect, as is intimated in well informed circles, the members of the House will then have an opportunity to censure or approve as they may deem proper; but till then they should do neither." The following wise words also were added: "We shall be sorry to see any attempt to make party capital out of this question. It is entirely national."

The *Age* (Augusta) informed its readers on July 15th that the latest rumors from various quarters concerning the treaty were believed to have no foundation, and the editor added: "We scarcely need repeat our often reiterated opinion that no agreement can be consummated upon the terms and conditions expressed by the Legislature of Maine during their late extra session, which terms and conditions are the only ones Maine can honorably accept." On July 29th, the *Age* announced that an agreement in relation to the boundary had been agreed upon. Great excitement, it stated, was manifested at Washington on Saturday, when the terms of the treaty were made known. "A letter, under that date, from an intelligent source, characterizes the feeling as amounting to 'exasperation.'" Reference was made to the *New York Herald* as claiming that the treaty would be rejected by a large vote; and the *Age* added: "We cannot hesitate to say, that unless it differs greatly from the newspaper accounts of it, it is not such a treaty

as Maine was entitled to or expected. It excites here, so far as we can learn, universal disappointment. . . . Momentous interests now hang upon the decision of the Senate. We trust that it will do its duty with a conscientious reference at once to the importance of settling a dangerous and exciting question, and to the honor and dignity of the country. We trust especially that it will yield no point of permanent national security for the sake of a temporary and delusive quiet."

The *Kennebec Journal* (Augusta), also on July 29th, announced that the Maine commissioners had assented to an arrangement agreed upon by the negotiators of the treaty, citing the Washington correspondent of the *New York Evening Post*, who, writing to that paper July 23rd, stated that the commissioners signed the agreement on the evening of the 22nd. "The terms," it was added, "were attacked in the House this morning by Mr. Gwin,¹ of Mississippi, upon the strength of a mere rumor. He pronounced the treaty, if the rumor was true, disgraceful in the extreme, and he said with a flourish of trumpets that he would sooner go to war than sanction it. Mr. Fessenden,² of Maine, very promptly and very handsomely rebuked this interference from a distant representative, and assured him that Maine, her commissioners and her senators and representatives, could take care of the interests of Maine quite as well as a Mississippi representative."³

The *Age* (Augusta) continued to express its dissatisfaction with the treaty as reports concerning its provisions reached the state capital. The following appeared on August 5th: "We must still express our decided disapprobation of the terms of the treaty as yet understood, with the advantage of a fuller confidence that we express the opinion of this section of the State. Four-fifths, at

¹ William M. Gwin, later United States senator from California.

² William Pitt Fessenden, who began his congressional career in 1841 as a member of the House of Representatives.

This occurred in a debate on the army bill, and Mr. Black, of Georgia, was inclined to support Mr. Gwin.

least, of those we happen to see, denounce those terms, as they are reported to exist." A week later, August 12th, the *Age* had given some attention to the many who held other opinions and remarked: "We respect the judgment of that great body of intelligent men who approve the treaty, and we do not underrate the force of the arguments in its favor. But we believe nevertheless, and most conscientiously, that when all the British objects effected by it are understood, it will be universally denounced as a disastrous one."

The *Kennebec Journal*, on the same date, confirmed its earlier statement that the terms of settlement, made by the negotiators of the treaty, had received the assent of the Maine commissioners, representing equally both political parties in the State; and expressed disapproval of all efforts that had as their end the rejection of the treaty.

But opposition continued. The readers of the *Age* were asked on August 19th, if in view of all the circumstances the State of Maine had not been "most egregiously humbugged." At a meeting of the citizens of Leeds on August 22nd, resolutions were adopted denying the right of the United States, with or without the consent of Maine, to cede any portion of the State embraced within the boundaries described by the treaty of 1783. Among these resolutions was the following: "That we give our unswerving opposition to all men, of whatever political party, who shall in any way support any treaty purporting to insure peace at the expense of our soil and of our honor." The *Kennebec Journal*, August 24th, referring to this meeting, deprecated such public agitation. In its view it was no slight gain at least to have "a subject of vexation, excitement and expense to both the state and nation," at length at rest.

The ratification of the treaty by the Senate was known in Portland on August 24th, and on the 26th the treaty was printed in full in the *Eastern Argus*. It appeared in the *Kennebec Journal* on September 2nd, and in the *Age* on September 9th. Public agitation, however, did not cease. The treaty continued to be

the principal topic of consideration. The *Argus*, August 25th, stated that the Maine commissioners consented to the treaty conditionally, and in this way laid the entire responsibility of its ratification upon the Senate. "They [the commissioners] protested against some of its provisions, and took the decided ground that it was not what Maine had a right to ask; but if the Senate thought for the sake of the general good, if her sister States thought she ought to make the sacrifice, she would do it. The consent was reluctantly given, and then only conditionally. The Maine Commissioners did not advise its ratification, and the Senate could in no wise be affected in its favor by any action of the agents from this State."

The *Age*, in commenting upon this statement, held that it must be regarded an authoritative exposition of the opinions of Commissioners Preble and Kavanagh. It was more than doubtful, however, whether it was equally authoritative as to the opinions of the Whig commissioners, Kent and Otis. As to the Democratic commissioners, their situation while in Washington was sketched in these words: "Surrounded by difficulties, importuned by gentlemen from all parts of the Union, receiving no support from our Massachusetts co-proprietors of the disputed territory, and, more than all, most basely betrayed by the secretary of state, Messrs. Preble and Kavanagh, in view of the alternative held up to them by way of intimidation, and in view of the false position into which Maine might be thrown by misrepresentations of this refusal, did determine so far to assent to the treaty as to permit it to go to the Senate for their decision. In the language of the *Argus* they 'threw the entire responsibility of its ratification upon the Senate;' so governing themselves that that body 'could in no wise be affected in its favor' from any action or expression of opinion on their part. Let this assent be regarded as wise or unwise, it does not, under the circumstances, authorize the apologists of Daniel Webster in vouching in his behalf, the authority of Messrs. Preble and Kavanagh, and leaves his conduct entirely without excuse or palliation. And it also leaves the Democracy

entirely free to condemn the treaty and its author, without any impeachment of the integrity of Messrs. Preble and Kavanagh, or any suspicion of their anxious and laborious efforts at Washington honorably to discharge the trust confided to them."

At the same time the action of the Whig commissioners received from the Whig papers in Maine like support. On their arrival in Washington, and during the progress of the negotiations, the most urgent appeals were made to them with reference to the proposed Webster-Ashburton negotiations. Moreover, it was not a matter concerning Maine only, but the whole United States. Considerations concerning a very difficult situation were pressed upon them, and they had discharged a great public duty honorably and patriotically.

In this way a strong public sentiment in favor of the treaty was at length developed in the greater part of the state. In the extreme eastern portion of Maine, however, condemnation of the treaty, "as a shame and a disgrace," was quite general. *The Frontier Journal*, a Democratic paper published in Calais, reported toward the close of 1842, that the prevailing sentiment of the people living along the border was one of decided opposition.

Up to this time, the Maine commissioners had given no public account of their connection with the boundary settlement. Such a statement, however, appeared on January 4, 1843, in a report to Governor Fairfield of their official actions. At the outset reference was made to the general understanding, before the commissioners proceeded to Washington, that the special minister from Great Britain was clothed with the most ample powers and furnished with the most liberal and conciliatory instructions, giving promise of a satisfactory adjustment of the boundary difficulties, provided Maine, on her part, would exercise a proper spirit of magnanimity and conciliation. It was soon learned, however, that instead of being clothed with full power for arranging a mutual exchange of territory in order to provide a better communication between Lower Canada and New Brunswick, Lord Ashburton had no authority to concede to Maine as an equivalent a

single acre of British soil, not even the smallest of the islands in Passamaquoddy Bay. In fact at one time, when the negotiators had come to a deadlock, Lord Ashburton showed from his instructions that he had put the most liberal construction upon his powers. The commissioners were satisfied, therefore, that the terms, as finally incorporated in the treaty, were the most favorable to Maine that could have been secured.

There remained to the commissioners, accordingly, only one of three courses of procedure. (1) They could break off the negotiation and return to Maine. (2) It was not too late to adopt the line recommended by the king of the Netherlands. Or (3) they could accede to the proposition made by President Tyler. The considerations that led to their acceptance of the third course were, first of all, that the proposition came from the president of the United States in the character of a mediator. Then, too, it was evidently the desire of the whole country that the boundary controversy should now be settled. The commissioners, also, were influenced by the fact that the value of the territory in the region of the highlands was of comparatively little account. "Should we then, for that strip," they asked, "forego all the advantages of a speedy and amicable settlement of the controversy? Maine is a commercial State. Her commerce is one of her principal resources. She is deeply interested both internally and externally in the preservation of peace. It is peace, and not war, that is to people her unoccupied lands and the rich valley of the Aroostook. It is peace which is to develop her resources, and give scope to her enterprising, hardy and industrious population. By settling the difficulty, Maine secures peace and quiet within her borders. She brings her best settling lands into market, and secures a rapid increase of population, where she most needs it. She puts an end to further encroachments, and to that border warfare, and those depredations, which have given rise to so much trouble, and subjected her to so much expense. She will receive into her treasury in money more than all the territory she gives up would ever yield her. She secures an indem-

nity for a large part of the expenses, already incurred by her, in protecting and exploring the territory. And furthermore, she secures the right of the free navigation of the St. John, and of a British market for the products of the forest and of the soil that are grown within its valley. On the whole, from considerations such as these, and on a careful reviewing of the whole matter with a single eye to the interests of Maine, we were induced to yield our conditional assent to the proposition made to us, as modified and engrafted into the treaty; and we now submit our doings in that behalf to the discernment and sound judgment of the Legislature and people of Maine."

This report, signed by the four commissioners, was undoubtedly in the hands of Governor Fairfield when he penned his annual message to the Legislature, delivered on January 7, 1843. In his reference to the treaty, and the adjustment of long standing differences with reference to the boundary between Maine and the British provinces, he felt constrained to say that the result of the negotiation, even if it was preferable to further procrastination and another foreign arbitration, was far different from what the people of Maine had anticipated. "I would not be understood as intending to cast censure upon the commissioners of this State," he said. "They were selected by the Legislature as gentlemen of elevated standing—commanding in a high degree, the confidence of the public, and as eminently qualified for such a service." But none the less the governor regarded the result, so far as the treaty was concerned, a great disappointment. If a portion of the territory of Maine "was necessary for the convenience of the British government, this State had a right to expect, on its being yielded, that a full and ample equivalent in other territory would have been freely tendered. Towards the fulfillment of such an expectation there has not been the slightest approximation. . . . If in this, Maine 'has not been treated as she has endeavored to deserve,' it is far from being the first instance. All her injuries, however, cannot shake her sense of duty. As a member of the Union she will continue to be what

she has ever been, faithful and true. And if she could be satisfied that the sacrifice was necessary for the good of the country, she could in that find ample consolation. To insolent and unfounded pretension she can yield nothing; to the cause of patriotism and the Union, everything.”¹

The report of the commissioners was referred by the Maine Legislature of 1843 to a joint select committee, but the committee did not present its report until March 21st and therefore at the close of the session. In some parts of the state, especially in the eastern part, there was still strong opposition to the treaty. The *Frontier Journal*, published in Calais, was exceedingly emphatic in its denunciation of the treaty, and as late as December, 1842, claimed that its own attitude² was the attitude of a large proportion of the people of Maine, adding this prophecy: “The day will come when not only Maine, but through the whole country that treaty will be universally execrated; and within three years from the present moment, the *Argus* itself will be as loud in its condemnation as it is now in its praise. ‘Mark that!’”

But those in Maine who were opposed to the treaty found their disappointment no greater than that of the joint select committee. Their report, however, did not overlook the eminent claims to respect which the commissioners from Maine of both parties were entitled to share. Nevertheless, the committee felt constrained to add that higher considerations than regard for any individuals compelled them to express the belief that the commissioners, in the settlement at Washington, assented “to terms not contemplated by the Legislature or people of Maine.” The committee was not insensible to “the pressure of adverse influences” to which the commissioners were subjected, and “the tyrannical threats addressed to them by the diplomatic secretary of the United States.” But the committee would have been pleased if the commissioners had taken a different course, as these words follow: “Better, indeed, had all been braved. Better, indeed,

¹*Resolves of Maine*, 1843, 242, 243.

The contrast was with the attitude of the Portland *Argus*.

had the American secretary been told that Maine would lose her own territory by honorable arbitration rather than sacrifice an acre to the spirit of unworthy compromise. Better, indeed, if our sister States had been admonished that they had degraded themselves as well as us, when they asked us to yield our part of a common American birthright."


Manifestly these words, expressing strong political feeling and action, should be read only in connection with the reading of the Maine commissioners' report, which fairly and fully records the difficulties that the commissioners encountered in Washington, and also the reasons by which at length they were constrained most reluctantly to yield the assent of the state to the boundary provisions of the treaty. That action, in view of all the facts and circumstances, the commissioners regarded as fully warranted. According to the best light they possessed, they endeavored to discharge a duty which they had not sought, but which the state, through its chosen representatives, had solemnly laid upon them; and it may confidently be said, after the lapse of more than three-quarters of a century, that time has justified their action.

It is true that Maine did not receive by the terms of the treaty the larger compensation she spurned ten years before. Referring to this fact Governor Washburn once remarked, "There is no part in the history of Maine in which I take greater satisfaction than this—that, while feeling keenly the injustice done to her, when once the sacrifice became inevitable, she was too proud to haggle about the price."¹

¹*Maine Historical Society Coll.*, First Series, VIII, 105.

CHAPTER XXI.

THE TREATY IN THE BRITISH PARLIAMENT.

 LORD Palmerston, who had been the British secretary of state for foreign affairs during the larger part of the decade preceding the Ashburton-Webster negotiations, was not pleased with the settlement. It was not such a settlement as he had desired to obtain during his term of office. Evidently he had been kept well informed concerning the opinions of prominent officials in Canada and the maritime provinces, both before and after the negotiations; and on March 21, 1843, in the House of Commons he asked for copies or extracts of the communications between the British government and Lord Ashburton with reference to the treaty. There were persons in England, he said, who were disposed to approve of the treaty. There was nobody, he believed, who did not think it a bad and very disadvantageous bargain for England. Doubtless there were some people in the country who were so anxious to have the dispute settled, that they were glad to have it settled upon any terms, even upon the disadvantageous conditions contained in the treaty. On the other hand, there were persons, of whom he wished to be regarded as one, who considered the transaction deserving of blame. The negotiations had not been skilfully conducted. The tone of the British representative was undignified throughout, and the terms agreed upon were unnecessarily disadvantageous to Great Britain. Lord Ashburton should have insisted that Great Britain was entitled to the whole territory in dispute. On the contrary, he allowed Mr. Webster to place the negotiation on the ground that the whole territory belonged of right to the United States; and all that England was to be permitted to retain was to be bought by her for considerations and equivalents. "But there

is the treaty," he added; it has been concluded, and it has been ratified."¹

Sir Robert Peel, in reply, stated that Mr. Webster had met with censure in some quarters in his own country similar to that which had assailed Lord Ashburton; but he believed that both negotiators were equally animated by a spirit of sincere regard for the interests of their country, uninfluenced by political considerations. As to the plan on which the negotiations were conducted he believed it would have been unwise to have attempted further explorations and inquiries by commissioners.²

Lord Palmerston, in his remarks, had referred to the Sparks red line map as confirming the British claim, and had blamed Mr. Webster for withholding from Lord Ashburton such important evidence. Replying to this lack of good faith on the part of the American secretary of state, the British prime minister thought it rather hard, with their knowledge of the practices of negotiators, that anyone should expect that the negotiator on the part of the United States should be held bound to disclose, to the diplomat with whom he was in conference, the weak parts of his case. "This map, it is true, was found in the archives of the foreign office at Paris," he said; "and a letter of Dr. Franklin's also has been found, having reference to some map; but there is no direct connection between the map so found and the letter of Dr. Franklin. In general there is such a connection as in the case of maps referred to in dispatches; but there is none in this case. There is nothing to show that the map so found is the identical map referred to by Dr. Franklin in his letter; and nothing can be more fallacious than relying on such maps. For let me state what may be said upon the other side of the question with respect to maps. We made inquiry about those maps in the foreign office at Paris, and we could find none such as that in question at first. We have not been so neglectful in former times with respect to the matter as the noble Lord seems to think. We made inquiries in

¹*Hansard's Parliamentary Debates*, LXVII, 1163, 1193-1218.

²*Ib.*, LXVII, 1241.

1826 and 1827, into the maps in the foreign office at Paris, for the purpose of throwing light upon the intentions of the negotiators of 1783. A strict search was made for any documents bearing upon the disputed question; but at that time neither letter nor map could be found. However, there were afterwards discovered by a gentleman engaged in writing a history of America, a letter and a certain map, supposed by him to be the map referred to in a letter. In answer to our first inquiry, as I have already stated, no such map could be discovered. The first which we received from the foreign office at Paris was a map found in 1783 by Mr. Faden, geographer to the king of England. On that map is inscribed—'A Map of the Boundary of the United States, as agreed to by the treaty of 1783, by Mr. Faden, geographer to the king.' Now, sir, that map placed the boundary according to the American claim, yet it was a cotemporary map, and it was published by the geographer to the British king. There was a work, which I have here, a political periodical of the time, published in 1783, called *Bewe's Journal*. It gives a full report of the debate in Parliament upon the treaty then being concluded, and, in order to illustrate the report, it also gives a map of the boundaries between the countries as then agreed to. That map, Sir, also adopts the line claimed by the United States. On subsequent inquiry, at Paris, we found a map, which must be the map referred to by Mr. Jared Sparks. There is placed upon that map a broad red line, and that line marks out the boundary as claimed by the British. It is probably a map by M. d'Anville, of 1746, and there can be no doubt, but that it is the map referred to by Mr. Jared Sparks; but we can trace no indication of connection between it and the dispatch of Dr. Franklin. To say that they were connected is a mere unfounded inference.

"But there is still another map. Here, in this country, in the library of the late king, was deposited a map by Mitchell, of the date of 1783—that map was in the possession of the noble Lord; but he did not communicate its contents to Mr. Webster. It is marked by a broad red line, and on that line is written, 'Bound-

ary, as described by our negotiator, Mr. Oswald;’ and that line follows the claim of the United States. That map was on an extended scale. It was in possession of the late king, who was particularly curious in respect to geographical inquiries. On that map, I repeat, is placed the boundary line—that claimed by the United States; and on four different places on that line, ‘Boundary as described by Mr. Oswald.’ Now I do not say that that was the boundary ultimately settled by the negotiators; but nothing can be more fallacious than founding a claim upon cotemporary maps, unless you can also prove that they were adopted by the negotiators; and when the noble Lord takes it for granted that if we had resorted to arbitration we should have been successful in obtaining our claims, I cannot help thinking that the matter would be open to much discussion. Indeed, I do not believe that that claim of Great Britain was well-founded; that it is a claim which the negotiators intended to ratify. I cannot say, either, that the inquiries which have been instituted since Mr. Sparks’ discovery have materially strengthened my conviction either way. I think they leave matters much as they were, and nothing, I think, can be more delusive than the expectation that, if the question were referred to arbitrators, the question would inevitably have been given in your favor, in consequence of the evidence of maps, which would not be regarded as maps recognized by the negotiators themselves. And then, Sir, with reference to the maps discovered subsequently to the conclusion of the negotiations conducted by Lord Ashburton. The noble Lord opposite has stated that his predecessor in office had made all possible inquiry into the matter, and possessed all the elements of information connected with it. Lord Ashburton then had a right to draw the same conclusion. He had a right to presume that he was sent abroad in possession of all the elements of information on which a satisfactory conclusion could be come to, and therefore the subsequent discovery of the map in Paris, even if it could be positively connected with Dr. Franklin’s dispatch, would be no ground for the impeachment of the treaty of Lord Ashburton,

or for proving that he had not ably and honorably discharged his duties. If blame should fall upon anyone, it should fall upon those who have been conducting these negotiations for years. But I think that I have shown that no blame can be attached either to Lord Aberdeen or Mr. Canning; that they did what they could to search the archives of the foreign office at Paris for information connected with the subject. The documents lately discovered were not kept in the political department of the French office, but in the historical department, and it was thus that while they had eluded former search they had come to be discovered by Mr. Jared Sparks. Nothing must be said of impeaching the accuracy or good faith of that gentleman; but he himself admits that the map which he discovered could not be traced to have had any connection with the dispatch of Dr. Franklin.''¹

Lord Macaulay, who now was in the opposition because of the fall of the Melbourne ministry, followed Sir Robert Peel. He would have it understood first of all that his relations with the people of the United States, so far as he had come into acquaintance with them, had been marked by courtesy and kind offices, and he could think of that great country not otherwise than as composed of people whose veins were full of British blood, whose minds were nourished by British literature, and whose valuable institutions were derived from the mother country. But, like Lord Palmerston, he was dissatisfied with Lord Ashburton. He found it impossible to read his letters without being struck with a certain humble, caressing, wheedling tone that pervaded them and which seemed to him utterly inconsistent with the dignity of the office which Lord Ashburton held. He had other objections. For example, the conventional line, proposed by Mr. Webster, left the Madawaska settlers south of the St. John in American territory. Lord Ashburton objected. The people were French Acadians and had professed great apprehensions of being sur-

¹ *Hansard's Parliamentary Debates*, LXVII, 1247-1250. For interesting references to these boundary maps, see Justin Winsor's paper, *The Cartographical History of the Northeastern Boundary Controversy*, printed in the *Proceedings of the Massachusetts Historical Society*, October, 1887.

rendered by Great Britain. It would be a hardship, not to say cruelty, said Lord Ashburton, to separate this happy, contented community.¹ Mr. Webster did not argue the matter with the British representative, but sent to him "a paper drawn up by the Maine commissioners, who pronounce an invective on the tyranny which they allege England has exercised towards this very people."

Sir Howard Douglas, who was governor of New Brunswick from 1824 to 1829, and therefore was very familiar with matters pertaining to the boundary controversy, came to the assistance of Sir Robert Peel in his defense of the Ashburton treaty, but with especial reference to the treatment British boundary affairs had received at the time Lord Palmerston was in office. His observations have historical interest. "Towards the end of the year 1828," he said, "preparations were making in Maine to construct a military road from Mars Hill into the disputed territory. I protested against this in December, 1828, and again in March, 1829, and I announced my determination that if it should be attempted, I would not again have recourse to law proceedings [as in the case of John Baker], but, acting on the verdict pronounced against Baker in the supreme court, I would interfere, with military force, to prevent any intrusion into the disputed territory. This effectually deterred the Americans from any similar attempt in my time. Having reported all this to his Majesty's government, I was ordered home to be consulted on the statements then preparing for submission to the King of Holland. I must here say that I considered the carrying out of these proceedings against Baker of such vital importance that I was determined I would not, under the circumstances, stop those proceedings. I stated this in the strongest terms. I will now confess, that even if the government had been so weak as to direct me to do this, instead of supporting me in the vigorous and firm manner they did, I was determined to disobey their order and resign my post. Now, Sir, upon the spot, the very identical spot where I caused Baker

¹*House Executive Documents, 27th Congress, Third Session, II, 38.*



SECOND BLOCKHOUSE AT FORT FAIRFIELD.



to be apprehended, and thus firmly asserted exclusive possession, jurisdiction and sovereignty, there now stands an American fort, established during the noble Lord's [Palmerston] time, after a series of encroachments on the one hand, and concessions on the other, which I shall quickly run through. Why, Sir, this was concession, compromise, surrender and even capitulation—it was conceding all I had contended, it was the surrender of everything I had asserted. The territory to the south of the St. John was thus wholly usurped and taken military possession of. Fort Fairfield was permitted to be built on the north line, nearly opposite to the mouth of the British river 'Tobique' and the blockhouse, or Fort Jarvis, on the spot where Baker had been apprehended on the right bank of the St. John, near the Fish river."¹

"If there be anything in this treaty, in the opinion of any honorable members, inconsistent with the interests of the country, prejudicial to the safety of our North American possessions, or derogatory to the honor of the crown, I do say, that it is not to the charge of the present government that these evils should be laid, but to the charge of the noble Lord who had permitted the civil jurisdiction and military occupation of the territory to be subverted and usurped; and which left nothing for his successor to do, but to compromise the question by a conventional line, or to adopt the other alternative and go to war."²

On the following day, and therefore very early in his brilliant parliamentary career, Mr. Disraeli continued the debate. A very general opinion in England, he said, was in favor of the Ashburton treaty. He believed, however, that the opinion was equally general that Great Britain had a right to the disputed territory, and could afford to be generous of that right. He questioned,

¹ John Baker was arrested at the place here stated, but the blockhouse built there was named Fort Kent. There were two blockhouses at Fort Fairfield. One was known as Fort Fairfield, but Fort Jarvis evidently was the name given to the second blockhouse, and was named for the provisional land agent in charge of the civil *posse* there at the time of the Aroostook war.

² *Hansard's Parliamentary Debates*, LXVII, 1273, 1274.

nevertheless, whether that right was not of a very doubtful character, and in support of this position he proceeded to offer evidence not introduced before, which he thought might have weight in other minds. "They had all heard of a map with a broad red line, which map, marking out the boundary according to the original claim of the British government, was discovered apparently in the archives of the foreign office in Paris subsequent to the settlement of the question, and had been talked of and written of by many who had never seen it. He, however, perhaps, was in a position to speak of it with more authority than some members of the House, for he had seen it. It was a map eighteen inches square, and was drawn by d'Anville. He believed that it was one of the smallest maps that d'Anville had ever drawn. It was not, by the by, a map of the disputed territory, nor a map of Canada, but a map of the whole of North America; and, consequently, this broad red line—[Lord John Russell, "strong"]. Well, this strong red line would itself occupy no slight part of the disputed territory. In fact it blotted out no inconsiderable portion of the State of Maine, which could occupy but a very small space in a map of North America, eighteen inches square. That was the map by d'Anville; but there was in England another map, which he supposed was the map yesterday referred to by the right honorable Baronet at the head of the government, of far greater dimensions, and which was also marked with a strong red line, giving the limits according to the American claim. That was the map drawn by Mitchell, a map which was recognized as of authority, having been brought from the collection of his late Majesty King George III, who, it was well known, had taken a great personal interest in the affairs of Canada and of North America generally. Now, it might be a question whether any argument at all ought to be raised on these marked maps. It was not he who raised it; yet so much stress had been laid upon these circumstances, he was bound to state that evidence existed, which if they were forced to decide on such a question, must, in his opinion, force them to a conviction that

the map drawn by Mitchell, was the map which guided the American negotiators, and none other. On this point he would trouble the House with an extract, which bore directly upon it, from the private correspondence of Dr. Franklin. There was a letter from Dr. Franklin, addressed to Mr. Livingston, after the settlement of the treaty; he had found it not in the work¹ of Mr. Jared Sparks, but in a book published a quarter of a century ago by Mr. Temple, the grandson of Dr. Franklin, and which contained all the private and diplomatic correspondence of Dr. Franklin while at Paris."

After reading the Franklin letter Mr. Disraeli continued: "Now Dr. Franklin at the time was extremely ill; his illness continued for about two months, and he had not been present at any of the meetings of the negotiators at which the boundaries had been arranged. This circumstance he repeatedly referred to in his correspondence, and in one of his letters he congratulated the Congress upon the arrival of Mr. Adams (by whom the boundaries had been settled), who 'was so well acquainted with the country.' He might also observe, that even if this French map had been addressed to Dr. Franklin, that fact, under the circumstances, proved nothing, for Dr. Franklin was only one of four negotiators, the others being Mr. Adams, Mr. Laurens, and Mr. Jay. Above all, the existence of such a map did not appear in the journals of the commissioners, or in the report made by them to Congress."²

In the course of his speech at the opening of the debate Lord Palmerston referred to Lord Ashburton as not only a British subject, but an American citizen, and so was unfitted by this double relationship to have the charge of a settlement in which large British interests were at stake. On the evening of March 23rd, after therefore the debate had closed, Lord Palmerston asked the attention of the House for a correction of this remark. He had

¹A part of this letter by Franklin will be found on page 54 of this volume.

²*Hansard's Parliamentary Debates*, LXVII, 1305, 1306.

been informed that he was mistaken and that there was no foundation for the supposition.¹

Ratifications of the treaty by both the United States and Great Britain were exchanged on October 13, 1842, and, on November 10th following, the treaty was formally proclaimed.

¹Lord Ashburton's wife was a daughter of William Bingham of Philadelphia, whose name in Maine has long been perpetuated in all references to the Bingham Purchase. In a letter to Mr. Webster, referring to the departure of her husband (whom on account of her health she was not to accompany to the land of her birth), Lady Ashburton wrote: "These honors were thrust upon him as the person most zealous in the cause of America, and most sanguine as to the possibility of settling the long pending differences between the two countries. God grant that his best hopes may be realized, and that I may see him return with a treaty of peace in his pocket." *The Letters of Daniel Webster*. Van Tyne, 1902, 254.

CHAPTER XXII.

MAINE RIGHT IN HER CONTENTION.

THE prominence of Maine in the boundary controversy was natural. It was her territory that Great Britain sought to obtain. Even while Maine was a part of Massachusetts, and known as the District of Maine, her people were active in claiming the line of the treaty of 1783, in opposition to British claims. But when Maine became a state, though other states, and especially those remote, might not care where the line was drawn, Maine did care, and with characteristic energy and tenacity she insisted that according to the language of the treaty the whole of the disputed territory was hers and should not be taken from her without proper equivalents. How energetically and tenaciously she maintained this position is abundantly illustrated in the preceding pages.

But was Maine right in this contention? That she was will appear from the established fact that in the earlier stages of the boundary controversy, representatives of the British government in New Brunswick found it difficult in their private correspondence, now accessible, to take any other view of the boundary line than is found in the language of the treaty of 1783, and was insisted upon by the people of Maine. The soundness of this early New Brunswick opinion was made very clearly to appear soon after the final settlement of the controversy in 1842, when the provinces of Canada and New Brunswick found it needful to settle a controversy of their own as the successors of the ancient provinces of Quebec and Nova Scotia. In this controversy, the two British provinces advocated claims that were urged respectively by the United States and Great Britain in their contention with reference to the boundary, Canada claiming a line drawn from Mars Hill, and New Brunswick claiming substantially the

line for which Maine contended. In fact, so divergent were these claims, and so utterly hopeless was the prospect of any agreement, that at length the British government found it necessary to refer the whole matter to a commission. This commission, appointed by the crown in 1846, consisted of two engineer officers of the British army and the attorney general of Nova Scotia, who were directed to report on the question whether any line between the two provinces could be drawn that would be acceptable to the parties at issue. If no such line could be found that would satisfy "the strict legal claims" of both, the commissioners were to state in their report "how a line could be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either; adverting at the same time to such interests (if there be any) as the empire at large may have in the adjustment of this question."¹

July 20, 1848, the commissioners reported that a line which would satisfy the strict legal claims of the two provinces could be drawn; but they also reported (1) that westward of the due north line from the source of the St. Croix there lay a tract of country, between the "highlands" and the boundary of the United States, as determined by the Ashburton-Webster treaty, "which in 1763 formed part of the ancient territory of Sagadahock," and "which, according to the strict legal rights of the provinces, belongs to neither;" (2) that the line of boundary demanded by the strict legal rights of the provinces was at variance with the actual possession of both, and with their mutual advantage and convenience; (3) that each province had exercised jurisdiction and extended its settlements for a considerable distance; (4) that, for reasons stated, territory strictly belonging to New Brunswick should be confirmed to Canada; (5) that a considerable portion of the territory west of the due north line from the source of the St. Croix, and belonging to neither province, might be beneficially assigned to New Brunswick, since it was chiefly settled

¹J. B. Moore, *International Arbitrations*, I, 157, 158.

under the authority of that province, was connected with it by natural communications, and had actually been in its possession and under its jurisdiction. Accordingly, instructed to consider matters of convenience, the commissioners recommended that New Brunswick should be bounded on the west by the boundary of the United States, as traced by the commissioners of boundary under the treaty of Washington, dated August, 1842, on a due north line from the source of the St. Croix. But the territory north of the St. John, and south of the highlands, once belonging to the ancient territory of Sagadahock, and therefore once to Maine, they recommended, not having formerly belonged to either party, should be divided between them, New Brunswick receiving 2,300 square miles and Canada 2,100.

The executive council of the Province of New Brunswick advised the acceptance of the recommendation of the commissioners as "an equitable settlement of the question so long pending;" but the executive council of Canada was "unable to recognize" either the "justice or equity" of the commissioners' recommendation. The British government then suggested a settlement by arbitration, the arbitrators to meet in London. Canada was to appoint an arbitrator and New Brunswick one, while a third was to be chosen by the two provincial members. As organized, the arbitration board consisted of the following members, Dr. Travers Twiss (New Brunswick), Thomas Falconer (Canada), and Judge Stephen Lushington of the Admiral Court, chosen by the representatives of Canada and New Brunswick. Their award (Mr. Falconer dissenting) was announced April 17, 1851. The line which it established was substantially that recommended by the royal commissioners in 1848, except it gave the fiefs of Temiscouata and Madawaska to Canada instead of to New Brunswick.¹

In other words, New Brunswick, in her controversy with Canada at this time, claimed as her northern boundary the "highlands" south of the river St. Lawrence, and as her western boundary the due north line from the source of the river St. Croix, as

¹J. B. Moore, *International Arbitrations*, I, 160, 161.

described in the treaty of 1783 and established by the St. Croix commission in 1798. But this was Maine's contention as to the boundary in the international controversy. In her contention with Canada New Brunswick's claim was adjudged to be right, and the claim was confirmed to her in 1851. That judgment, however, was at the same time an admission and a declaration that Maine's contention in the international boundary controversy was right. The people of New Brunswick, however, seem to have been slow in recognizing the real significance of this decision in her favor. When the subject has come up among them in the lapse of years since the international settlement, as it frequently has, even most prominent men have vigorously asserted that New Brunswick was robbed of her rights by the Ashburton-Webster treaty. As late as the close of the last century it was stated by a son of New Brunswick that this view is well-nigh general in the province. "As a thorough New Brunswicker," he writes, "I inherited the old prejudice, assuming as a matter of course that we must be right and the other party wrong, and I have abused Lord Ashburton as roundly as anybody for what I supposed was his betrayal of the interests of the province. But when I began to examine for myself the original documents, and maps, I found difficulty in reconciling them with this view, a difficulty which increased with further examination, until finally I was forced to the belief that in this dispute Maine was technically right and New Brunswick wrong, and that the Ashburton treaty gave us territory to which we were not entitled under the treaty of 1783."¹

As a summary of the facts as he found them, the writer of the above citation makes the following statement:

"1. The original charters, documents, maps, etc., when calmly examined by themselves (not as quoted and commented

¹W. F. Ganong, *Evolution of the Boundaries of New Brunswick*, Proceedings of the Royal Society of Canada, 1901, 348, 349. As other New Brunswick historical writers who have examined the original sources of boundary information with like results, Professor Ganong mentions Mr. James Hannay and Dr. W. O. Raymond.

upon by the partisan advocates of either side) seem to me to point irresistably to this conclusion.

"2. The principal men of New Brunswick, those whose duty made them examine minutely into all the documents of the case (namely, Governor Carleton, Ward Chipman and Edward Winslow), all admitted without the least question the full American claim; they realized fully the disadvantages of the boundary thus allowed, but hoped to remove them by some special arrangement.

"3. The New Brunswick Legislature, in 1814, admitted the American claim, and petitioned the British government to have an alteration made in the line at the pending treaty of peace; the British government in the same year admitted the American claim, at least in part, in asking for a cession of territory, to preserve the communication from Quebec to New Brunswick.

"4. The British claim to Mars Hill Highlands as a boundary did not make its appearance until after 1814; it was tentatively advanced in 1815, had not been elaborated in 1817, and made its first formal appearance in the controversy in 1821 in the argument of Ward Chipman, who, in one of his private letters, speaks of it in such a way as to imply that it was being formulated by himself. Why, if this was the true boundary, did not Great Britain advance it earlier in the controversy?

"5. As soon as the treaty of 1842 was signed, an active dispute arose between New Brunswick and Quebec as to their inter-provincial boundary, and New Brunswick claimed as her northern boundary the highlands south of the St. Lawrence; but since, by the treaty of 1783, the western boundary of New Brunswick was the eastern boundary of Maine, this was granting the Maine claim. Quebec, on the other hand, claimed as a boundary the Mars Hill Highlands; if Great Britain's claim to an international boundary on those highlands was correct, then Quebec's claim was correct, but Great Britain never admitted it. During the controversy the agents of both sides more or less distinctly admitted the justice of the American claim. The provinces could not agree, and a commission was appointed by the British govern-

ment consisting of two Englishmen and a Nova Scotian, and in 1848 they rendered their decisions, in which they asserted that the disputed territory belonged legally to neither party, but was a part of the ancient province of Sagadahock [and therefore of Maine] (Blue Book of 1851, 93), and they proposed to divide it between the two provinces. The same opinion was reasserted by Travers Twiss, an eminent Englishman, on the final arbitration which settled this boundary in 1851 (Blue Book, 76), when he said that the country south of the St. Lawrence watershed, and west of the north line belonged to neither province, but to the British crown. This territory was divided between Quebec and New Brunswick."¹

The writer of this summary adds: "The legal claim of Maine, therefore, seems to me justified by the documents in the case, by the opinion of contemporary New Brunswick and British authorities, and by the decisions of eminent Englishmen since." But having thus conceded that legally Maine was right in her contention, Professor Ganong states that he cannot justify the conduct of Maine "in endeavoring to force these extreme rights;" and he continues: "Her right to the territory in dispute was not due to her discovery, exploitation or settlement of it; it was purely accidental. Moreover, the territory was of comparatively slight value to her; she had not a settler upon it nor a road to it for half a century after the treaty was signed. On the other hand, it was settled in good faith by British subjects, and was not simply valuable, it was invaluable to Great Britain. That under these circumstances, Maine insisted upon the uttermost letter of her rights, refusing all accommodation until any other settlement was hopeless, is by no means to her credit. If Great Britain appears to disadvantage in employing diplomacy to save what she legally had lost, in another way Maine appears to at least equal disadvantage in her Shylockian even though legal policy."²

¹W. F. Ganong, *Evolution of the Boundaries of New Brunswick*, Proceedings of the Royal Society of Canada, 1901, 350, 351. J. B. Moore, *International Arbitrations*, I, 157-161.

²*Evolution of the Boundaries of New Brunswick*, 353.

It is not easy to differ with one who has so frankly conceded that Maine was legally right in her contention with reference to the treaty line of 1783. But in the last words of the above citation there is a serious reflection upon the attitude of Maine in the boundary controversy, and one doubtless which gives expression to a prevalent opinion in New Brunswick even on the part of those who are conspicuous for their freedom from partisan prejudice. The character of Shylock, as it is manifested so clearly in Shakespeare's *Merchant of Venice*, is that of a cold, selfish, heartless, grasping Jew. He is the depository of the calculating, unrelenting vengeance of all his race—a good hater, stung even to madness by repeated undeserved provocations, and laboring by one desperate act of lawful revenge to throw off the load of obloquy and oppression heaped upon him and all his race. His religion, his avarice, his affection, all concur to stimulate his hatred of the oppressor. The pound of flesh, which is his by legal right, he will have; and the only reason he will give for demanding it is "if it will feed nothing else, it will feed my revenge." It is the attitude of such a man that is presented as characterizing Maine's attitude in the controversy which the northeastern boundary questions awakened.

But is this a just characterization? It is at once granted that the territory covered by Maine's claim in the controversy did not come to her by the right of discovery, exploitation or settlement. Nevertheless, Maine had a deep, abiding interest in that territory, antedating even the Revolutionary period. Her first settlers were there shortly after the period of discovery and exploration. The descendants of those first settlers, and those coming later, formed more than a third of Pepperell's army at the capture of Louisburg in 1745, having very decided opinions with reference to the presence of the French in Canada and Nova Scotia.¹ If there was any one thing that was uppermost in the minds of the men of Maine throughout the colonial period it was that Great Britain (of which she was a part), and not France, was to exercise

¹H. S. Burrage, *Maine at Louisburg in 1745*.

dominion on this western continent. A little later, in the Revolutionary struggle as we have already seen, it was the one great hope of Maine that Canada and Nova Scotia would form a part of the new nation. When, therefore, the war closed, leaving British possessions on the northward and eastward of her territory, now the State of Maine but then a part of Massachusetts, the boundary line was not a matter of slight importance on this side of the border. Though Maine had not a single settler within the limits of the disputed territory for many years after the treaty of 1783, she understood clearly the value and importance of that territory, extending northward almost to the river St. Lawrence, which treaty rights had secured to her. Her strenuous maintenance of the rightfulness of her claim is a most forceful witness to this fact.

The statement that there were British subjects in the territory claimed by Maine, and that on this account also Great Britain had rights which should have been recognized by Maine, requires little attention. These British subjects were French settlers largely if not wholly. They were Acadians, who, having been sent into exile, had found their way back to places with which they were acquainted in their earlier communications with Quebec. In the very beginning of the boundary controversy, long before Maine became a state, it was conceded by the British that these settlers were on American soil. In 1799, Edward Winslow, a New Brunswick Loyalist, secretary of the St. Croix commission, referring in a letter to the award of that commission, wrote: "As it is we lose not a single British settlement. A few miserable Frenchmen at Madawaska, on the route to Canada, fall within their [Maine] territory." Indeed, up to the time of the treaty of Ghent, in 1814, the British admitted that these French settlers were living on American soil, and held it to be of no importance that they were there.

But Maine's claim, it is also added, covered territory that was "invaluable to Great Britain," and so, though Maine had a legal right to the disputed territory, other rights should have been recognized by the State of Maine. But the territory was deemed

important also to the State of Maine. George Evans, in a speech in the national House of Representatives February 7 and 8, 1838, asserted its importance. "We have seen," he said, "with what tenacity Great Britain clings to the object of obtaining a 'small portion of waste territory,' only as a means of communication between the provinces—doubtless a measure to her of great importance and strength, and just in the same proportion, a measure to us, if yielded to, of insecurity and weakness."¹ This was a view which had again and again found expression by the people of Maine. In it there was not even the remotest hint that Maine was playing the part of Shylock. If Great Britain desired to secure better communications between Canada and the maritime provinces, why should not Maine receive in return Grand Manan and Campo Bello? Such exchanges were suggested during the controversy—territory for territory—and it was not Maine that stood in the way of their acceptance. When such an exchange was brought forward in the Ashburton-Webster negotiations, Lord Ashburton asserted that he had no authority for yielding a single foot of British territory, and declined to listen to the suggestion.

As has already appeared in these pages, Maine was ready to yield what she regarded as hers by right, notably in the reference of the boundary question to the king of the Netherlands, and also at the time of the Ashburton-Webster negotiations. She could yield territory for equivalents, but even the national government could not take it from her *without her consent*. Unquestionably in the negotiations with reference to the islands of Passamaquoddy Bay, she would have been glad if an arrangement could have been made for an exchange of territory wanted by New Brunswick and Canada in order to improve their communications, if, by the exchange, she could have secured Grand Manan and Campo Bello, which naturally belong to Maine. Even in the final settlement, when Maine bowed to the larger interests of the national govern-

¹*Speech upon the Subject of the Northeastern Boundary*, Washington, 1838, 34.

ment and accepted the loss of territory, it was on the promise of an indemnity, not that she cared for the money offered by the national government, but as a matter of principle consistently maintained throughout the controversy. As Professor Ganong, referring to the Ashburton-Webster settlement, says: "Maine was in part compensated by a large sum paid her by the United States; though it must by no means be inferred that this prompted her decision, for her stand in the matter had unquestionably been taken upon principle, and her consent was given for the good of the Union."¹

This is true. At no period of the long controversy did Maine act a Shylockian part. Neither selfishness nor avarice characterized her actions. Her course was consistent and patriotic from the beginning of the controversy to its close; and it was because of her firm and intelligent action that the extreme British claim was not pushed to a successful termination.²

¹*Evolution of the Boundaries of New Brunswick*, 346, 347.

²This matter is more fully considered by the writer of this volume in a paper entitled, *The Attitude of Maine in the Northeastern Boundary Controversy*, read before the Maine Historical Society, January 2, 1903, and printed in Vol. I, Third Series of the Society's Collections, 353-368.

CHAPTER XXIII.

THE FINAL SETTLEMENT.

THE decision of Commissioners Barclay and Holmes, rendered November 24, 1817, as joint commissioners with reference to the national ownership of the islands in Passamaquoddy Bay, did not define the course of the international boundary line among the islands whose ownership they declared. Accordingly irritating differences of opinion early arose among interested parties connected with one or the other of the two nationalities, and these differences naturally became increasingly irritating, especially with the increase of population in the vicinity of the boundary. In order to provide such a definition, therefore, and so to bring the northeastern boundary controversy to a final settlement, the second article of the convention of July 22, 1892, arranged by the United States and Great Britain, reads in part as follows: "The high contracting parties agree that the governments of the United States and of her Britannic Majesty in behalf of the Dominion of Canada shall, with as little delay as possible, appoint two commissioners, one to be named by each party, to determine upon a method of most accurately marking the boundary line between the two countries in the waters of Passamaquoddy Bay in front of and adjacent to Eastport, in the State of Maine, and to place buoys, or fix such other boundary marks, as they may determine to be necessary." In order to carry this authorization into effect Thomas C. Mendenhall was appointed commissioner on the part of the United States, and W. F. King, on the part of Great Britain.

The commissioners, in entering upon the task assigned to them in connection with this appointment, agreed that a liberal interpretation of their duties would require, or at least permit, the marking of the whole extent of the undefined boundary from

the mouth of the St. Croix River to the open sea beyond West Quoddy Head, in the State of Maine, and Liberty Point on Campo Bello Island in the Province of New Brunswick. As such action would prevent all further controversy as to the boundary, the commissioners established the necessary ranges for the delimitation of the line, finding themselves, as the work proceeded, in agreement in regard to the interpretation of the treaty of 1783, and of the commissioners under the fourth article of the treaty of Ghent in 1814, except as to two parts of the boundary line. First, they were unable to agree "as to that part of the boundary line which passes by and is adjacent to Pope's Folly Island"; and second, "They were also unable to agree as to the definition or location of that part of the line which passes by and is in the vicinity of Lubec Channel Lighthouse."¹

The commissioners, finding themselves thus in disagreement at certain parts of the line, submitted individually in December, 1894, certain propositions, neither being willing to accept those of the other. Later, the secretary of state in Washington, Mr. Gresham, was consulted by Mr. Mendenhall, who explained to the secretary the points at issue between the two commissioners. In accordance with Mr. Gresham's advice, Mr. Mendenhall drafted a joint report showing agreement by the commissioners upon points not in controversy, while separate reports, it was stated, were to be presented upon contested issues. This draft was not satisfactory to Mr. King, who, August 20, 1895, objecting to the impression given by Mr. Mendenhall that the commissioners differed only with regard to two portions of the line, namely at Pope's Folly Island and at the Middle Ground, submitted a draft of his own which, after a reference to differences that had arisen between the commissioners as work under their

¹Appendix to *Evidence and Argument in Behalf of the United States of America*, 2. This pamphlet, published by the government, contains the argument and documents presented in accordance with article one of the treaty between Great Britain and the United States, April 11, 1806 (relating to the international boundary line through Passamaquoddy Bay), by Chandler P. Anderson, Harry Mighels Verrill, Frederick Hale and Charles D. Booth.

tentative agreement progressed, closed with these words: "We have therefore to report that we are not prepared to join in any recommendation as to any portion of the line. Separate reports will be submitted by us upon the points of difference."¹

Certainly, this was an unpromising situation, and nothing further was done with reference to any settlement of the boundary line in Passamaquoddy Bay until near the close of the Roosevelt administration, when, April 11, 1908, Mr. Root, secretary of state, concluded a treaty between the United States and Great Britain, by which, in article one, it was agreed that the two countries should again appoint commissioners for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada in the waters of Passamaquoddy Bay from the mouth of the St. Croix River to the Bay of Fundy. After describing the location of certain portions of the line, concerning which Commissioners Mendenhall and King had agreed, the treaty, with respect to the remaining portion of the line, declared, that "each of the high contracting parties shall present to the other, within six months after the ratification of this treaty, a full printed statement of the evidence, with certified copies of original documents referred to therein which are in its possession, and the arguments upon which it bases its contention, with a view to arriving at an adjustment of the location of this portion of the line in accordance with the true intent and meaning of the provisions relating thereto of the treaties of 1783 and 1814 between the United States and Great Britain, and the award of the commissioners appointed in that behalf under the treaty of 1814; it being understood that any action by either or both governments, or their representatives authorized in that behalf, or by the local governments on either side of the line, whether prior or subsequent to such treaties and award, tending to aid in the interpretation thereof, shall be taken into consideration in determining their true intent and mean-

¹Appendix to *Evidence and Argument in Behalf of the United States of America*, 11.

ing."¹ It was further agreed that in case an agreement was reached, the commissioners should lay down and mark this part of the boundary as provided in the treaty; but in the event of a failure to agree within a set period, the location of that portion of the line should be determined by arbitration. The preparation of the full printed statement of the case for the United States, called for by the treaty of 1908, was assigned to Chandler P. Anderson, counselor of the state department in Washington, and Messrs. Verrill, Hale and Booth, of Portland, Maine. This statement was duly exchanged for that prepared by Great Britain and presented through the British ambassador in Washington. The attorneys for the United States contended that it was not the intent of the commissioners appointed under the treaty of 1814 to award to Great Britain Pope's Folly Island, known in earlier days as Mark Island and Green or Little Green Island; but "to lay the basis for a line of division which would give this island to the United States; and that even if the commissioners did not intend to define such a line, this island should now be accorded to the United States in accordance with the principles which controlled these commissioners in their decision as to the other islands,"² which would make the boundary line at this point follow the channel east of Pope's Folly Island. As to the portion of the line south of Lubec Narrows, it was the contention of the attorneys of the United States that "the main channel, from prior to the treaty of 1783 up to the creation of the present dredged channel in 1878, and subsequent years, was east of the Upper Middle Ground, so called, and followed the shore of Campo Bello Island around the southerly side of Cranberry Point, and ran

¹ Copy of the treaty as published in 1910 at the government printing office, 3, 4.

² These principles were such as to lead them to confirm to each government such islands as had been taken up and actually occupied by the citizens of the respective governments. *Appendix to Evidence and Argument in Behalf of the United States of America*, 23-26.

close by Duck Islands; and that accordingly the boundary should follow the course of this old channel."¹

In the evidence and argument offered in behalf of Great Britain attention was principally given to the presentation of matters having reference to the nationality of Pope's Folly Island, although the question was considered whether the most convenient course for the international line, north of Lubec Narrows, should not be fixed irrespective of the nationality of that island, "having regard to the relative width of the alternate channels presented, or to the comparative depth and availability for navigation of such channels."² South of the Lubec Narrows, the international line, the British attorneys contended, should follow the dredged channel west of the Upper Middle Ground.³

With this exchange of arguments, documents, etc., boundary matters were allowed to rest for awhile. No commissioners were appointed in accordance with the provisions of the treaty of 1908. During the Taft administration, there was a re-awakening with reference to boundary considerations, and on May 21, 1910, the president of the United States, by a proclamation, announced the conclusion of a treaty between the United States and Great Britain, "fixing and defining the location of the international boundary line between the United States and the Dominion of Canada in Passamaquoddy Bay and to the middle of Grand Manan Channel, and removing all causes of dispute in connection therewith." As plenipotentiaries to that end President Taft appointed Philander C. Knox, secretary of state of the United States, for the United States, and James Bryce, his Britannic Majesty's ambassador and plenipotentiary at Washington, was made the representative of Great Britain. It was the desire of both governments that an adjustment of the points of difference between the two should be reached without a resort to arbitration, as was provided in the treaty of 1908, in case of a disagreement on the

¹*Evidence and Argument in Behalf of the United States of America*, 6, 7.

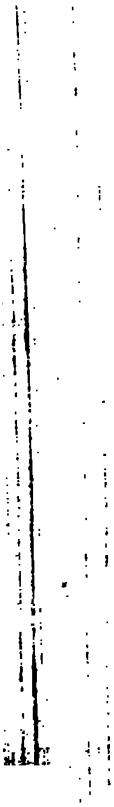
²Typewritten copy of the *Evidence and Argument in Behalf of Great Britain*, Maine Historical Society Library, margin page 3.

³*Ib.*, Maine Historical Society Library, 33.

part of the commissioners; and the plenipotentiaries entered upon their duties with an evident determination to seek such an adjustment. The evidence and arguments presented under the provisions of the treaty of 1908 were examined, and after taking into consideration all actions of the respective governments and of their representatives authorized in that behalf, and of the local governments on either side of the line, whether prior or subsequent to the treaties of 1783 and 1814 between the United States and Great Britain and the award of the commissioners appointed under the treaty of 1814, tending to aid in the interpretation sought, the high contracting parties agreed "that the location of the international boundary line between the United States and the Dominion of Canada from a point in Passamaquoddy Bay accurately defined in the treaty between the United States and Great Britain of April 11, 1908, as lying between Treat Island and Friar Head, and extending thence through Passamaquoddy Bay and to the middle of Grand Manan Channel, shall run in a series of seven connected straight lines for the distances and in the directions" therein stated. It was also agreed that the location of the boundary as defined in the foregoing article should be laid down and marked by the commissioners under the provisions of the first article of the treaty of April 11, 1908, and that the line "so defined and laid down should be taken and deemed to be the international boundary extending between the points therein mentioned in Grand Manan Channel and Passamaquoddy Bay."

The ratification of this treaty, thus establishing the location of the international boundary line in the waters of Passamaquoddy Bay, and signed at Washington by the plenipotentiaries of the two countries, Knox and Bryce, May 21, 1910, was advised by the Senate of the United States June 6th; it was ratified by President Taft July 13th; by Great Britain June 23rd; ratifications were exchanged at Washington August 20th; and the proclamation of the treaty followed September 3, 1910.

An examination of the treaty shows that the plenipotentiaries accepted, and therefore confirmed, those portions of the line concerning which Commissioners Mendenhall and King were in agreement. For the portions of the line in which the commissioners disagreed, above and below Lubec Narrows, the plenipotentiaries established a compromise line, finding, as at other periods in the boundary controversy, that only by compromise was a settlement possible. As laid down upon the map, the boundary line thus established left Pope's Folly Island within the jurisdiction of the United States, while south of the Lubec Narrows the line was made to follow the course of the dredged channel and not that of the channel east of the Upper Middle Ground. This end of the long controversy was not according to the wishes of either of the contending parties. It was not a matter of slight importance, however, that an irritating boundary trouble had been settled amicably and permanently. An undetermined international line opens an easy way for jurisdictional and customs evasions that multiply as the neighboring population increases. The primary questions with reference to the international boundary in Passamaquoddy Bay may have been trivial, but at the opening of the twentieth century these questions were sufficiently in evidence to call for a reasonable and permanent settlement. This was secured. The line has been definitely laid down and marked, and Maine's border contentions may at last be regarded as ended.



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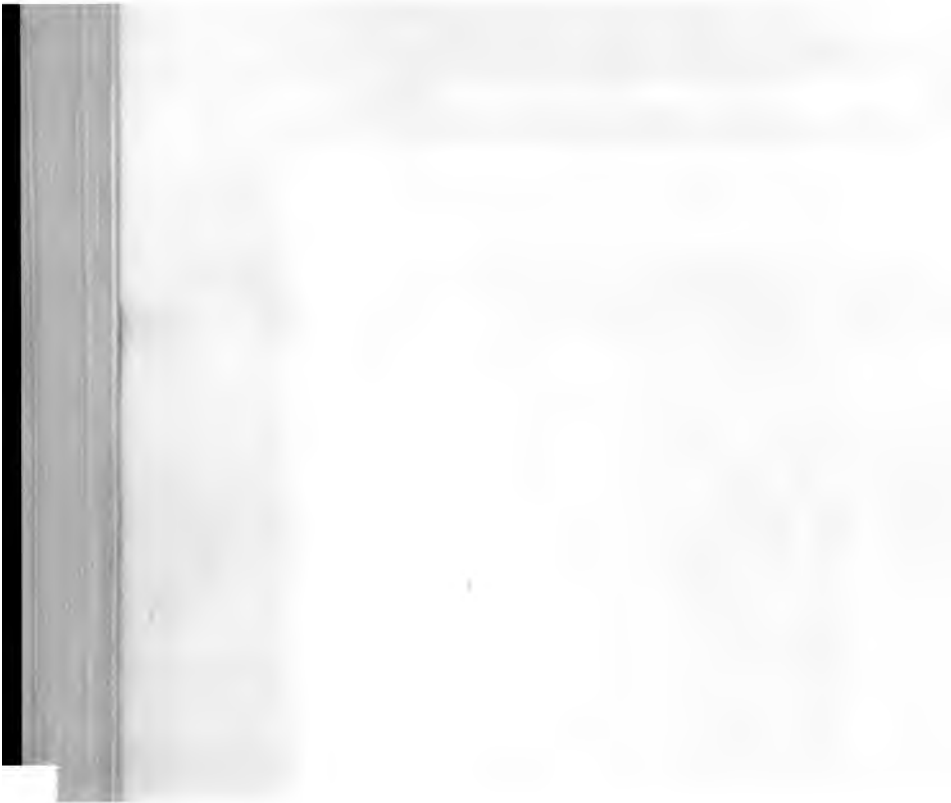
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